Cottoni Posthuma:

DIVERS

CHOICE PIECES

Tho: OF THAT Phillipps

Renowned Antiquary,

Sir ROBERT COTTON,

Knight and Baronet.

Preserved from the Injury of Time, and exposed to publick light, for the benefit of Posterity,

---

By *J. H.* Esq;

London, Printed by *M. C.* for *C. Harper.* and are to be Sold by *W. Hensman* and *T. Fox*, at the *Kings Arms*, and at the *Angel* in *Westminster-Hall*, 1679.

To his worthily Honoured Friend, Sir *Robert Pye* Knight, at his House in *Westminster*.

THE long interest of Friendship, and nearness of Neighbourhood, which gave you the opportunity of conversing often with that worthy Baronet, *who was Author of these ensuing Discourses, induced me to this Dedicatory Address. Among the* Greeks *and* Romans (*who were the two Luminaries that first diffused the rayes of Knowledge and Civility through these North-west Climes,*) *He was put in the rank of the best sorts of* Patriots, *who preserv'd from putrefaction and the rust of Time, the Memory and Works of* Vertuous *Men, by exposing them to open light for the general good; Therefore I hope not to deserve ill of my Country, that I have published to the World these choice notions of that Learned Knight Sir* Robert Cotton, *who for his exact recerchez into*

Antiquity, *hath made himself famous to* Posterity.

Plutarch *in writing the* lives *of* others, *made his* own *everlasting*: *So an* Antiquary, *while he feels the pulse of* former *Ages, and makes them known to the* present, *renders himself long liv'd to the* future.

There was another inducement that moved me to this choice of Dedication, and it was the high respects I owe you upon sundry obligations, and consequently the desire I had that both the present *and* after *times might bear witness how much I* am, *and* was,

SIR,

3. *Nonas Aprl.* 1651.

Your humble and, truly devoted Servant,

James Howel.

To

To the knowing Reader, *touching these following Discourses, and their* AUTHOR.

THE memory of some men is like the *Rose*, and other odoriferous flowers, which cast a sweeter and stronger smell after they are pluck'd: The memory of others may be said to be like the *Poppie*, and such Vegetals that make a gay and specious shew while they stand upon the stalk, but being cut and gather'd, they have but an ill-favour'd scent: This worthy Knight may be compared to the first sort, as well for the sweet odor (of a good name) he had while he stood, as also after he was cut down by the common stroke of Mortality: Now to augment the fragrancy of his Vertues and Memory, these following Discourses, which I may term, not altogether improperly a *Posie* of sundry differing Flowers, are expos'd to the World.

All whoever knew this well-weighed Knight, will confess what a great Zeal he was to his Countrey, how in all Parliaments, where he served so often, his main endeavours were to assert the publick Liberty, and that *Prerogative* and *Priviledge* might run in their due Chan-

Channels: He would often ſay, *That he himſelf had the leaſt ſhare in himſelf*, but his Countrey and his Friends had the greateſt intereſt in him: He might be ſaid to be in a perpetual purſuit after Vertue and Knowledge; He was indefatigable in the ſearch and reſearch of Antiquity, and that in a generous coſtly manner, as appears in his Archives and copious Library; therefore he may well deſerve to be ranked among thoſe Worthies--- *Quorum Imagines lambunt* Hederæ *ſequaces*; for an Antiquary is not unfitly compared to the *Ivie*, who uſeth to cling unto ancient Fabriques and Vegetals.

In

In these Discourses you have

1. *A Relation of proceedings against Ambassadors who have miscarried themselves, and exceeded their Commission.*
2. *That the Kings of* England *have been pleased to consult with their Peers in Parliament for Marriage of their Children, and touching Peace and War,* &c.
3. *That the Soveraigns Person is required in Parliament in all Consultations and Conclusions.*
4. *A Discourse of the legality of Combats, Duels, or Camp-fight.*
5. *Touching the question of Precedency between* England *and* Spain.
6. *Touching the Alliances and Amity which have intervened betwixt the Houses of* Austria *and* England.
7. *A Discourse touching Popish Recusants, Jesuits and Seminaries.*
8. *The Manner and Means how the Kings of* England *have supported and improved their States.*
9. *An Answer to certain Arguments urged by a Member of the House of Commons, and raised from supposed Antiquity, to prove that* Ecclesiastical *Laws ought to be Enacted by* Temporal *men.*

10. *The Arguments produc'd by the House of Commons concerning the Priviledge of every Free-born Subject.*

11. *A Speech delivered in the House of Commons Assembled at* Oxford *in the first year of the King.*

12. *A Speech delivered before the Council Table, touching the alteration of Coin.*

13. *Valour Anatomized in a Fancy, by Sir* Philip Sidney.

14. *A brief Discourse concerning the Power of the Peers and Commons of Parliament, in point of Judicature.*

15. *Honesty, Ambition and Fortitude Anatomized by Sir* Francis Walsingham.

16. *The Life and Reign of* Henry *the Third, compiled in a Critical way.*

These Discourses being judiciously read, will much tend to the enriching of the understanding, and improvement of the Common stock of Knowledge.

A RELATION OF THE PROCEEDINGS AGAINST *AMBASSADORS*

Who have miſcarried themſelves, *&c.*

IN humble obedience to your Graces Command, I am emboldened to preſent my poor advice to this the greateſt, and moſt important cauſe that ever happened in this State, the Quiet of the Kingdom, the honour of the Prince, the ſafety of the *Spaniſh* Ambaſſadors Perſon, expoſed hereby to the fury of the people, all herein involved: A conſideration not the leaſt for the reputation of the State and Government, though he little deſerve it.

The information made to his ſacred Majeſty by him, That your *Grace* ſhould have plotted this Parliament; Wherein if his Majeſty did not accord to your deſigns, then by the Authority of this Parliament to confine his ſacred Perſon to ſome place of pleaſure, and transfer the Regal Power upon the Prince: This Information, if it were made by a Subject, by the Laws of the Realm were High Treaſon, to breed a rupture between the Soveraignty and the Nobility, either by Reports or Writings, and by the Common Law is adjudged no leſs: The Author yet knowing that by the repreſenting the Perſon of a Soveraign Prince he is by the Law of Nations exempt from Regal Tryal, all actions of one ſo qualified being made the Act of his Maſter, until he diſavow: And injuries of one abſolute Prince to another, is *Factum hoſtilitatis*, and not *Treaſon.* The immunity of whom *Civilians* collect as they do the reſt of their grounds from the practice of the *Roman* State, deducing their Arguments from theſe Examples. The *Fabii* Ambaſſadors from *Rome* were turned ſafe from the *Chades* with demand of juſtice againſt them only, although they had been taken bearing Arms with the *Etrurians* their Enemies: The Ambaſſadors of the *Tarquines*: *Morte affligendos Romani non judicârunt, & quanquam viſi ſunt ut hoſtium loco*

Titus Livius 2. dec.

Livius.

loco essent, jus tamen Gentium voluit. And where those of *Syphax* had plotted the murder of *Masinissa. Non aliud mihi factum quàm quod sceleris sui reprehensi essent,* saith *Appian:* The Ambassadors of the Protestants, at the Council of *Trent*, though divulging there the Doctrine of the Churches, contrary to a Decree there enacted, a crime equivalent to *Treason*, yet stood they protected from any punishment: So much doth publick conveniency prevail against a particular mischief; That the State of *Rome*, though in case of the most capital crime, exempted the *Tribunes* of the people from question during the year of office: And the *Civilians* all consent, that *Legis de Jure Gentium indictum est, ut eorum corpora salva sint, propter necessitatem legationis, ac ne confundant jura commercii inter Principes.* The redress of such injuries, by such persons, the example of Modern and best times will lead us to. *Vivia* the *Popes* Legate was restrained by *Henry* the Second, for exercising a power in his Realm, not admitted by the King, in disquiet of the State, and forced to swear not to act any thing in *Præjudicium Regis vel Regni. Hen.* 3. did the like to one of the *Popes* Ambassadors, another flying the Realm secretly, fearing, *timens pelli sui*, as the Record saith, *Edward.* 1. so restraining another until he had, as his Progenitors had, informed the *Pope* of the fault of his Minister, and received satisfaction of the wrongs. In the year 1523.

Acta Triden. Concil.

August. de legibus Antiq. Roman.

Benedict. in vita Hen. 2.

Record. *in Scaccar. West. Clauſ. Edw.* 1.

Lewis in the Paper Chart. 1523.

Lewis de Pratt: Ambaſſador for *Charles* 5. was commanded to his houſe, for accuſing falſly *Cardinal Wolſey* to have practiſed a breach between *Hen.* 8. and his Maſter, to make up the Amity with the *French* King; Sir *Michael Throgmorton* by *Charles* the 9. of *France*, was ſo ſerved, for being too buſie with the *Prince* of *Conde* in his faction. Doctor *Man* in the year 1567. was taken from his own houſe in *Madrill*, and put under a Guard to a ſtraiter Lodging, for breeding a Scandal (as the *Conde Teri* ſaid) in uſing by warrant of his Place, the Religion of his Country, although he alledged the like permitted to *Ghuſman de Sylva* their Ambaſſador, and to the *Turk* no leſs than in *Spain*. In the year 1568. *Don Ghuernon d' Eſpes* was ordered to keep his houſe in *London*, for ſending ſcandalous Letters to the *Duke d' Alva* unſealed. The Biſhop of *Roſſe* in the year 1571. was firſt confined to his houſe, after to the Tower, then committed for a good ſpace to the Biſhop of *Ely* his care, for medling with more buſineſs than belonged to the place of his imployment: The like was done to Dr. *Alpin* and and *Malviſett* the *French* Ambaſſadors ſucceſſively, for being buſie in more than their Maſters affairs. In the time of *Philip* the ſecond of *Spain*, the *Venetian* Ambaſſador in *Madrill*, protecting an offender that fled into his houſe, and denying the Alcalds or Juſtices to enter his houſe, where the Ambaſſador ſtood armed to withſtand them, and

and one *Bodavario* a *Venetian*, whom they committed to Prison, for his unruly carriage, and they removed the Ambassador unto another house, until they had searched and found the Offender: Then conducting back the Ambassador, set a guard upon his house, to stay the fury of the people inraged. The Ambassador complaining to the King, he remitted it to the Supreme Council; they justified the proceeding, condemning *Bodavario* to lose his head, and other the Ambassadors servants to the Galleys, all which the King turned to banishment, sending the whole process to *Inego de Mendoza* his Ambassador at *Venice*, and declaring by a publick Ordinance unto that *State*, and all other Princes, that in case his Ambassadors should commit any offence, unworthily, and disagreeing to their professions, they should not then enjoy the priviledg of those Officers, referring them to be judged by them where they then resided. *Bernardino de Mendoza*, for traducing falsly the Ministers of the State to further his seditious Plots, was restrained first, and after commanded away in the year 1586. The last of *Spanish* Instruments that disquieted this State, a benefit we found many years after by their absence, and feel the want of it now by their reduction.

Having thus shortly touched upon such precedent examples, as have fallen in the way of my poor observation. I humbly crave pardon to offer up my simple opinion

what course may be had of prosecution of this urgent cause. I conceive it not unfit, that with the best of speed, some of the chief Secretaries were sent to the Ambassador by way of advice, that they understanding a notice of this information amongst the common people, that they cannot but conceive a just fear of uncivil carriage towards his Lordship or his followers, if any the least incitement should arise; and therefore for quiet of the State, and security of his person, they were bound in love to his Lordship to restrain, as well himself as followers, until a further course be taken by legal examination, where this aspesiion begun, the way they only conceived secure to prevent the danger; this fear in likelyhood will be the best motive to induce the Ambassador to make discovery of his intelligence, when it shall be required: I conceive it then most fit, that the Prince and your Grace to morrow should complain of this in *Parliament*, and leaving it so to their advice and justice, to depart the House, the Lords at the instant to crave a conference of some small number of the Commons, and so conclude of a Message to be sent to the Ambassador to require from him the charge and proofs; the Persons to be sent, the two Speakers of the two Houses with some convenient company of either, to have their Maces and ensigns of Office born before them to the Ambassadors Gate, and then forborn, to shew fair respect to the Ambas-

sadors

sadors, then to tell them that a relation being made that day in open Parliament of the former information to the King by his Lordship, they were deputed from both Houses, the great Council of the Kingdom, to the which, by the fundamental Law of the State, the chief care of the Kings safety and public quiet is committed, they were no less the high Court of Justice, or *Supersedeas* to all others, for the examining and correcting all attempts of so high a nature as this, if it carry truth; That they regarded the honour of the State, for the Catholicks immoderate using of late the Lenity of Soveraign *Grace* to the scandal and offence of too many, and this aspersion now newly reflecting upon the Prince and others, meeting with the former distaste (which all in public conceive to make a plot to breed a rupture between the King and State, by that party maliciously layd) hath so inflamed and sharpned the minds of most, that by the access of people to Term and Parliament, the City more filled than usual, and the time it self near *May* day (a time by custom apted more to licentious liberty than any other) cannot but breed a just jealousie and fear of some disorder likely to ensue of this information, if it be not aforehand taken up by a fair legal tryal in that High Court: Neither want there fearful examples in this kind in the Ambassadors of *Genoa* upon a far less ground in the time of Parliament, and his house de-

moliſhed by ſuch a ſeditious tumult: The Parliament therefore, as well to ſecure his Lordſhips perſon, followers and friends, from ſuch outrages, as to preſerve the honour of the State, which needs muſt ſuffer blemiſh in ſuch misfortunes, they were ſent thither to require a fair diſcovery of the ground that led his Lordſhip ſo to inform the King. That they might ſo thereupon provide in Juſtice and Honour, and that the reverence they bear unto the dignity of his Maſter, may appear the more by the mannerly carriage of this Meſſage, the two that are never imployed but to the King alone, were at this time ſent, and that if by negligence of this fair acceptance, there ſhould happen out any any ſuch diſaſter and danger, the World and they muſt juſtly judg as his own fault. If upon the delivery of this Meſſage the Ambaſſador ſhall tell his charge, and diſcover his intelligence, then there will be a plain ground for the Parliament to proceed in Examination and Judgment; but if (as I believe) he will refuſe it, then is he *Author Scandali* both by the Common and Civil Laws of this Realm, and the Parliament may adjudg it falſe and untrue, and declare by a publick Act, the Prince and your Grace innocent, as was that of the Duke of *Glouceſter*, 2 *Rich.* 2. and of *York* in *Henry* the ſixth his time, then may the Parliament joyntly become Petitioners to his Majeſty, firſt to confine his Ambaſſador to his houſe, re-

ſtraining

straining his departure, until his Majesty be acquainted with his offence, and aswel for security as for further practice to put a Guard upon the place, and to make a Proclamation that none of the Kings Subjects shall repair to his house without express leave: And to send withal a Letter, with all speed, of complaint against him to the King of *Spain*, together with a Declaration under the Seals of all the Nobility, and Speaker of the Commons in their names as was 44 *Hen.* 3. to the Pope, against his Legate, and 28 *Edw.* 1. Requiring such Justice to be done in this case, as by the Leagues of Amity, and the Law of Nations is usual, which if the King of *Spain* refuse, or delay, then it is *Transactio Criminis* upon himself, and an absolution of all Amity and friendly intelligence, and amounts to no less than a War denounced. Thus have I by your leave, and command, delivered my poor opinion, and ever will be ready to do your Grace the best service, when you please to command it.

THAT

THAT THE KINGS OF ENGLAND

Have been pleaſed, uſually, to Conſult

WITH THEIR

PEERS

IN THE

GREAT COUNCIL,

AND

Commons in *Parliament*,

Of Marriage, Peace, and War.

Written by Sir *ROBERT COTTON*, Knight and Baronet, *Anno* 1621.

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THAT THE KINGS OF ENGLAND Have been pleased, usually, to Consult WITH THEIR PEERS IN THE Great Council, &c.

TO search so high as the *Norman* Conquest, it is necessary to lay down the form and Government of those times, wherein the state of affairs then lead in another form of publick Councils; for the people brought under by the Sword of *William*, and his followers to subjected vassallage, could not possess in such Assemblies the right of their former liberties, division and

William the Conqueror.

Malmsbury.

and power having mastered them, and none of their old Nobility being left either of credit or fortune; what he retained not in providence as the Demesnes of the Crown, or reserved not in piety for the maintenance of the Church, he parted to those Strangers that sailed along with him in the Bark of his adventure, leaving the Natives (for the most part) as appeareth by his survey in no better condition than Villenage; He moulded their Customs to the manner of his own Country, and forbore to grant the Laws of the Holy *Edward* so often called for.

To supply his occasions of men, mony, or provisions, he Ordered that all those that enjoyed any fruit of his Conquest, should hold their Lands proportionably by so many Knights fees of the Crown, and admitted them to infeoff their followers, with such part as they pleased of their own portions, which to ease their charge they did in his and his Sons time, by two infeoffments, the one *de novo*, the other *de veteri*; This course provided him the body of his War, the money and provision was by Hydage assessed on the common people; at the consent of their Lords, who held in all their Signiories such right of regality, that to their Vassals (as *Paris* saith) *quot Domini tot Tyranni*, and proved to the King so great a curb and restraint of power, that nothing fell into the care of Majesty after, more than to retrench the force of this

Ex lib. feod. in Scacc.

Hen. 1. Ex lib. pub. in Scacc.

Chron. de Dunstable. Mat. Paris Benedictus Monachus in vita Hen. 2.

this Aristocracy that was like in time to strangle the Monarchy.

Though others foresaw the mischief betimes, yet none attempted the remedy, until King *John*, whose over-hasty undertakings, brought in those broyls of the Barons Wars. *Gervas. Dorch. Roger Wendover. King* John.

There needed not before this care to advise with the Commons in any publick assemblies, when every man in *England* by tenure held himself to his great Lords will, whose presence was ever required in those Great Councils; and in whose assent his dependent Tenants consent was ever included.

Before this Kings time then, we seek in vain for any Council called, he first, as may be gathered (though darkly by the Record) used their Counsels and assents in the sixth year of his Reign. *Claus. 6. Joh. in 3. Dorso.*

Here is the first summons, in Records, to the Peers or Barons, *Tractaturi de magnis, & arduis negotiis*, it was about a War of defence against the *French*; And that the Commons were admitted at this time, may be fitly gathered by this Ordinance, viz. *Provisum est assensu Archiepiscoporum, Comitum, Baronum, & omnium fidelium nostrorum Angliæ, quod novem milites per Angliam inveniend. decimarum*, &c. and this was directed to all the Sheriffs in *England*, the ancient use in publishing Laws: From this there is a breach until the 18 *Hen.* 3. where the next summons extant is in a *Petit.* 18. *Hen.* 3.

Plea

Plea Roll, of that year, but the Ordinances are loſt: From hence the Records afford us no light until the 49 of the ſame King, where then the form of ſummons to Biſhops, Lords, Knights, and Burgeſſes, are much the ſame in manner, though not in matter, to thoſe of our times.

Clauſ. 49. Hen. 3. in. 11. Dorſ.

This Parliament was called to adviſe with the King *pro pace aſſecuranda & firmanda*, they are the words of the Writ, and where advice is required, conſultation muſt needs be admitted.

Edw. 1.

To this King ſucceeded *Edward* his Son, a wiſe, a juſt, and fortunate Prince; in his Reign, and ſo long to the fourth of his Grandchild, we have no light of publick Councils in this kind, but what we borrow in the Rolls of Summons, wherein the form ſtood various according to the occaſions, until it grew conſtant in the form it is now, about the entrance of *Rich.* 2. The Journal Rolls being ſpoiled, by the injury of times or private ends.

Ex Rot. Parl. in Archivis London.

Clauſ. 5. Edw. 1. in. 12.

This King, in the fifth of his Reign, called a Parliament, and therein adviſed with his Lords and Commons for ſuppreſſing of *Llewellen* Prince of *Wales*, and hearing that the *French* King intended to invade ſome pieces of his Inheritance in *France*, he ſummoned a Parliament, *Ad tractand. ordinand. & faciend. cum Prælatis, Proceribus & aliis Incolis Regni quibuſlibet hujuſmodi periculis & excogitatis malis ſit objurand.* Inſerting in the Writ that it was

Rot. Parl. Anno 7 Edw. 1.

Lex

Lex justissima, provida circumspectione stabilita: That *Quod omnes tangit ab omnibus approbetur.* In 34. *Super ordinatione & stabilimento Regis Scotiæ*, he made the like Convention. *Clauf. 7. Edw. 1. in 3. Dorf. Clauf. 34. Ed. 1. in dorf.*

His Son the second *Edward*, *pro solennitate Sponsalium & Coronationis*, consulted with his people in his first year; in his sixth year, *super diversis negotiis statum regni & expeditionem* Guerræ Scotiæ *specialiter tangentibus*, he assembled the State to advise, the like he did in the eighth. *Edw. 2. Clauf. 1. Edw. 2. in 19. in dorf. Clauf. 6. Ed. 2. in 3. in dorf. Clauf. 8. in 3. in dorf.*

The *French* King having invaded *Gascoin*, in the thirteenth year the Parliament was called, *super arduis negotiis statum Gasconiæ tangentibus*. And in 16. to consult *ad refrænand. Scotorum obstinentiam & militiam.* *Clauf. 13. Ed. 2. in 13. in dorf. Clauf. 16. E. 2. in 27. in dorf.*

Before that *Edward* the 3. in his first year would resolve whether Peace or War with the *Scotish* King, he summoned the Peers and Commons, *super præmissis tractare & consilium impendere.* *Edw. 3. Clauf. 1. Ed. 3. in dorf.*

The Chancellor in *Anno quinto* declareth from the King the cause of that Assembly, And that it was to consult and resolve, whether the King should proceed with *France* for recovery of his Signiories, by alliance of marriage, or by War? And whether to suppress the disobedience of the *Irish*, he should pass thither in Person or no? *Rot. Parl. 5. Edw. 3.*

The year following he re-assembleth his Lords and Commons, and requireth *Parl. 6. Edw. 3.*

their advice, whether he ſhould undertake the Holy Expedition with the *French* King that year, or no? The Biſhops and Proctors of the Clergy would not be preſent, as forbidden by the Canons ſuch Councils, the Peers and Commons conſult, applauding the Religious and Princely forwardneſs of their Soveraign to this holy enterprize, but humbly adviſe a forbearance this year for urgent occaſions.

Rot. Parl. 6. Edw. 3. Seſſ. 2. in 6.

The ſame year, though at another Seſſions, the King demanded the advice of his people, Whether he ſhould paſs into *France* to an interview as was deſired for the expediting the Treaty of Marriage: the Prelates by themſelves, the Earls and Barons by themſelves, and the Knights of the Shires by themſelves, conſulted apart, for ſo is the Record; and in the end reſolved, That to prevent ſome dangers likely to ariſe from the North, it would pleaſe the King to forbear his journey, and to draw towards thoſe parts where the perils were feared, his preſence being the beſt prevention; which advice he followed.

Rot. Parl. 7. Edw. 3.

In the following *Parliament* at *York* the King ſheweth how by their former advice he had drawn himſelf towards the North parts, and now again had aſſembled them to adviſe further for his proceedings, to which the Lords and Commons having conſulted apart, pray further

ther time to resolve, until a full assembly of the State, to which the King granting, adjourneth that Sessions. At the next meeting they are charged upon their Allegiance and Faith, to give the King their best advice; the Peers and Commons consulting apart, deliver their opinions, and so the Parliament ended.

Rot. Parl. 7. Edw. 3. Sess. 2. Parl. 7. Edw. 3. in. 6.

In the 13 year the Grands and Commons are called to consult and advise how the Domestick quiet may be preserved, the Marches of *Scotland* defended, and the Sea secured from forreign Enemies; the Peers and Commons having apart consulted, the Commons after their desire not to be charged to counsel in things *Des queux ils n'ont pas cognizance*, answer, That the Guardians of the Shires, assisted by the Knights, may effect the first, if pardons of Felony be not granted.

Rot. Parl. 13. Edw. 3.

The care of the Marches they humbly leave to the King and his Council, and for the safeguard of the Seas, they wish that the Cinque Ports, and Marine towns, discharged for the most part from the main burthens of the In-land parts may have that left to their charge and care, and that such as have lands neer the Coasts be commanded to reside on those possessions.

The Parliament is the same year reassembled *Avisamento Prælatorum, procerum, necnon communitatis*, to advise *de ex-*

Rot. Parl. 13. Edw. 3. Sess. 2.

peditione guerræ in partibus transmarinis; at this, Ordinances are made for provision of Ships, arraying of men for the Marches, and defence of the Isle of *Jersey*, naming such in the Record, as they conceive fit for the imployment.

Parl. 14. *Ed.* 3. The next year *De la Pool* accounteth in Parliament the expences of the Wars, a new aid is granted, and by several Committees in which divers are named that were no Peers of Parliament, the safeguard of the Seas, and defence of the borders are consulted of.

In the 15 year, *De assensu Prælatorum Procerum & aliorum de consilio*, the Kings passage into *France* is resolved of. *Anno* 17. *Badlesmere*, instead of the Council declareth to the Peers and Commons, That whereas by their assents the King had undertaken the Wars in *France*, and that by meditation of the Pope a truce was offered, which then their Soveraign forbore to entertain without their well allowance; the Lords consult apart, and so the Commons returning by Sir *William Trussel* an answer, their advice and desire is to compose the Quarrel, approve the Truce, and the Popes mediation.

Rot. Parl. 18. *Edw.* 3. The Popes undertaking proving fruitless, and delays to the *French* advantage, who in the mean space allied with *Scotland* and others, practised to root out the *English* Nation in *France:* This King again assembled the year following,

ing, in which the Peers and Commons after many days meditation, resolve to end either by Battel or Peace, and no more to trust upon the mediation or message of his Holiness.

In the 21 year, the chief Justice *Thorpe* declaring to the Peers and Commons that the *French* Wars began by their advice first, the Truce after by their assents accepted, and now ended, the Kings pleasure was to have their Counsels in the prosecution, the Commons being commanded, *Que ils se deveroyent trait ensemble & se quils ensenteroient monstrer au Roy & au gravitur de son consilio*, Who after four days consulting, humbly desire the King to be advised by his Lords and others, more experienced than themselves in such affairs. *Rot. Parl. 21. Edw. 3.*

To advise the King the best for his *French* imployments, a Parliament was summoned *Anno* 25. Herein the King for a more quick dispatch willeth the Commons to elect 24 or 30 of their House to consult with the Lords, these to relate to their fellows, and the conclusion general by the Lords to the Kings. *Parl. 25. Ed. 3.*

In the 27 a Great Council is assembled, many of the lay Peers, few of the Clergy, and of the Shires and Burroughs but one a piece. *Parl. 27. Ed. 3.*

This was for the prosecution of the *French* Wars, when honourable peace could not be gotten; but the year following *Parl. 27. Ed. 3.*

lowing a Truce offered, the King forbore to entertain, until he had the consent of the Peers and Commons, which they in Parliament accorded unto before the Popes Notary, by publick Instrument.

Parl.29. Ed.3. The dallying of the *French* King in conclusion of peace, and the falling off of the Duke of *Brittany*, having wrought his end with *France* by reputation of the *English* succour, is the year following declared in Parliament, and their advice and aid required for the Kings proceeding.

Parl.36. Ed.3. In the 36 year he called a Parliament to consult whether War or Peace by *David* King of *Scots* then offered, should be accepted?

Parl.40. Ed.3. King *John.* In the 40 the Pope demanding the tribute of King *John*, the Parliament assembled, where after consultation apart, the Prelats, Lords, and Commons advise the denyal, altough it be by the dint of Sword.

Parl. 43. Ed.3. In 43. the King declares to the Peers and Commons, that the *French* against the Articles of the Truce, refused payment of the moneys, and delivery of the Towns, summoning *La Brett*, and others the Kings subjects in *Gascony*, to make at *Paris* their appeals, and had forraged his Town of *Bontion*, requiring, whether on their breach he might not again resume the stile and arms of *France*.

The Lords and Commons had apart consulted, they advised the King to both,

both, which he approving, altered the inscription and figure of his Seal.

Two years after it was declared to the Peers and Commons, that by their advice he had again resumed the stile and quarrel of *France*, and therefore called their advice for the defence of the realm against the *French*, securing of the Seas, and pursuing of the War, of which they consult, and resolve to give the King an aid; the like of Counsel and supply was the year succeeding. *Parl.* 45. *Ed.* 3. *Parl.* 46. *Ed.* 3.

In the 50 a Parliament to the purposes of the other two was summoned; and the year following the King in Parliament declaring how the *French* combined underhand against him with *Spain* and *Scotland*, required their advice, how Peace at home, the Territories abroad, Security of the Sea, and charge of the War might be maintained. I have the longer insisted in observing the carriage of these times, so good and glorious, after Ages having not left the Journal entries of Parliament so full, which with a lighter hand I will pass through. *Parl.* 50. *Ed.* 3.

Richard his Grand-child succeeded to the Crown, and troubles, having nothing worthy his great fortunes, but his great birth; the first of his Reign he pursued the Steps of his wise Grandfather, advising with Peers and Commons how best to resist his Enemies, that had lately wronged many of his Subjects upon the Sea coasts. *Rich.* 2. *Parl.* 1. *Rich.* 2. *in* 5 & 6.

Parl.1. Rich.2. in 7. In the ſecond year he again conſulted, with his people, how to withſtand the *Scots*, who then had combined with the *French* to break the Truce.

Parl.3. Rich.2. in 4. & 5. In the third he called the advice of Parliament, how to maintain his regality, impaired by the Popes proviſion, how to reſiſt *Spain*, *France* and *Scotland*, that had raiſed Wars againſt him, how to ſuppreſs his Rebels in *Guyen* and *Ireland*, and how to defend the Seas.

Parl.4. Rich.2. in 2 & 3. The like in the fourth year following at *Windſor*; the year ſucceeding at a

Parl.5. Rich.2. in 3. great Council, the King having propoſed a voyage Royal into *France*, now called the Parliament to determine further of it; and it is worthy obſervation, for the moſt before any propoſition of War or Peace were vented to the Commons, a debate thereof proceeded in the great Council to ſtay it fitter to popular advice.

Parl. 5. Seſſ. 2. The quarrel of *Spain* continuing, the Duke of *Lancaſter* offered a Voyage againſt them, ſo that the ſtate would lend him money, after conſultation they granted aid, but not to bind them to any continuance of Wars with *Spain*.

Parl.6. Rich.2. In the 6th the Parliament was called, to conſult about defence of the borders, the Kings poſſeſſions beyond Sea, *Ireland* and *Gaſcoyne*, his Subjects in *Portugal*, and ſafe keeping of the Seas; and whether the King ſhould proceed by Treaty

of

of Alliance, or the Duke of *Lancaster* by force; for the Conquest of *Portugal*, the Lords approve the Dukes intention for *Portugal*, and the Commons advise, that *Thomas* Bishop of *Norwich*, having the Popes *Croiceris*, should invade *France*.

The same year the State was re-assembled to consult, whether the King should go in person to rescue *Gaunt*, or send his Army; the Commons after two days debate, crave a conference with the Lords; the effect is not entered in the Roll, only they bid Sir *Thomas Pickering* their Speaker protest, that Counsels for War did aptly belong to the King and his Lords; yet since the Commons were commanded to give their advice, they humbly wished a Voyage Royal by the King; if not, that the Bishop of *Norwich* ought with the advantage of the Popes *Croiceris* be used in that service, who accepted the Charge with ill success; he further for the Commons prayed, that the Kings Unkle should not be spared out of the Realm, before some place be setled with the *Scott*, and that the Lord *de la Sparre* sent with Propositions from *Spain*, may first be heard. *Parl. 6. Sess. 2.*

The Chancellor in the seventh year, in the name of the King willeth the Lords apart, and so the Commons, to consult whether Peace or War with *Scotland*, or whether to resist or assail the *Par. 7 Rich. 2.*

the Kings adventure with *Spain*, *France*, or *Flanders*.

Their opinion is not entered in the Rolls (an omission usual by the Clarks neglect) only their Petition is recorded, that the Bishop of *Norwich* may accompt in Parliament the expence of the monies, and be punished for his faults in the service he undertook, both which are granted.

Parl.7.Sess 2. At the next Sessions, the same year, the Commons are willed to advise upon view of Articles of Peace with the *French*, whether War, or such a Unity should be accepted: They modestly excused themselves as too weak to consult in such weighty affairs. But being charged again as they did tender the honour and right of the King, they make this answer, *Quils intendent que aucunes sermœs & terres que mesme leur Leige auroit oit pur cest accord in Guien, si serront tenus dobt Roy Francois par homage & service, mais ne persont uny que leur dit Leige voiroit assenter trope legierement de temer dicens Francois pertiel service la ville de Callis & aulires terres conquises des francoise per lespreneve verroit la comen ense faest fait, si autrement lour perroit bien faire*, giving their opinions rather for Peace than War; Peace with *France* not succeeding the eighth year, the body of the State was willed to advise, whether the King in his own person, or by sending

Par. 8 Rich 2.

of

of forces against the *French*, *Spain*, *Flanders*, and *Scotland*, should proceed.

This King having assembled at *Oxon*, his great Council to advise whether he should pass the Seas or no, with an Army Royal, and they not daring to assent without greater Counsel. *Claus. 9 Rich. 2.*

A Parliament the tenth year to have the advice of the Commons, as well as of the Lords, was called, and how the Realm should be governed in their Sovereign's absence. *Par. 10. Rich. 2.*

The truce with *France* was now expired, the Parliament was called in the 13th. to advise upon what conditions it should be renewed, or otherwise how the charge of the War should be sustained; at this assembly, and by consent of all, the Duke of *Lancaster* is created Duke of *Aquitaine*, the Statute of provisions now past, the Commons a party in the Letter to the Pope. *Parl. 13 Rich. 2.* *Rot. Claus. 13. Ric. 2.*

The year succeeding, a Parliament is called, for the King would have advice with the Lords and Commons for the War with *Scotland*, and would not without their Counsels conclude a final peace with *France*. The like assembly for the same causes was the year ensuing, the Commons interesting the King to use a moderation in the Law of provisions, to please at this time their holy Father, so that the Statutes upon their dislike may again be executed; and that to *Par. 14. Ric. 2.*

nego-

negotiate the peace with *France*, the Duke of *Aquitaine* may rather than another be imployed.

Parl.17. Ri.2. To consult of the Treaty with *France* for Peace, the King in the seventeenth calleth a Parliament (the answer of the Lords is left unentred in the Roll) the Commons, upon their faith and allegiance charged, advised that with good moderation homage may be made, for *Guien* an appenage of the French *Crown*, so it trench not to involve the other pieces of the English Conquest, their answer is large, modest and worthy to be marked.

Henry 4. Now succeedeth a man that first studied a popular party, as needing all to support his titles.

Parl.5. Hen. 4. *Parl. 6. Hen.* 4. *Parl.* 7, & 8. *Hen.* 4. *in* 19. & 20.

He in the fifth year calleth a Parliament to repress the malice of the Duke of *Orleance*, and to advise of the Wars in *Ireland* and *Scotland* (neither Counsels or supplies are entred in the Roll) and to resist an invasion intended by *France* and *Brittain* he assembleth the State again; the like was the second year following for *France*.

Claus. 7. *H.* 4. In this the Commons confer, for guard of the Sea, and make many Ordinances, to which the King assenteth, the peace with the Merchants of *Bruce* and *Foins* is debated, & a Proclamation published, as they resolved; by the Speaker the Commons complain of *96* pieces of im-

importance lost in *Guien* the year before, *In* 33.
need of the defence of the borders, and
Sea coasts, to suppress the Rebellion in
Wales,and disloyalty of the Earl of *Northumberland*; they humbly desire that *In* 57.
the Prince may be dispatched into those
parts with speed, and that the Castle of
Manlion, the key of the three Realms
might be left to the care of the English, *In* 59.
and not to *Charls* of *Navarre* a stranger,
and to have a vigilant eye on the Scotish
Prisoners.

In the tenth the Parliament is commanded to give their advice about the Truce with *Scotland*, and preparation against the malice of the *French*.

His Son, the wise and happy undertaker, advised with the Parliament in *Hen.* 5.
the first year, how to cherish his Allies *Parl.* 1. *Hen.* 5.
and restrain his Enemies; for this there *In* 2.
was a secret Committee of the Commons appointed to conferr with the Lords, the matter being entred into a schedule touching *Ireland*, *Wales*, *Scotland*, *Callis*, *Guien*, Shipping, Guard of *In* 4.
the Sea, and War, provision to repulse the Enemies.

In the second he openeth to the Parliament his Title to *France*, a quarrel he *Parl.* 3 *Hen.* 5.
would prosecute to death, if they allowed and aided, death is in his Assembly enacted to all that break the Truce, or the Kings safe conduct.

The year following, peace being offe- *Parl.* 3. *Hen.* 5.
red

red by the *French* King, and the King of the *Romans* arrived to effect the work, the King refuseth any conclusion until he had thereunto advice and assent of the Lords and Commons, for which occasion the Chancellor declareth that Assembly.

Parl. 4 & 5. *Hen.* 5. In the fourth and fifth, no Peace being concluded with *France*, he calleth the State together to consult about the War, concluding a Treaty of amity with *Sigismund*, King of the *Romans*, by allowance of the three Estates, and entred Articles into the Journal Rols.

Pasl. 5 *Hen.* 5. The same year, by the Duke of *Bedford*, in the Kings absence, a Parliament was called to the former purposes, as appeareth by the Summons, though in the Roll omitted. The like in the seventh.

Parl. 7 *Hen.* 5. The Treaty with *France* is by the Prelates, Nobles, and Commons of the Kingdom perused and ratified in the 11th. of his Reign.

Hen. 6. *Rot. Parl.* 2. *Hen.* 6. His Son more holy than happy, succeeded; adviseth him the second year with the Lords and Commons, for the well keeping the Peace with *France*; consulteth with them about the delivery of the Scottish King, and the conclusion of it is confirmed by common assent.

*Rot.Pa.*3. *H.* 6. And in the third year they are called to advise and consent to a new Article in the League with *Scotland*, for change of Hostages.

And

And in the ninth, conclude certain persons by name to Treat a Peace with the Dolphin of *France*. *Rot. Pa. 9. H. 6.*

The Treaty at *Arras*, whither the Pope had sent as Mediators two Cardinals not succeeding.

The King in Parliament, *Anno* 14. sheweth he must either lose his Title, Stile, and Kingdom of *France*, or else defend it by force; the best means for the prevention thereof he willeth them to advise him. *Rot. Parl. 14. Hen. 6.*

He summoneth again the next year the State, to consult how the Realm might be best defended, and the Sea safe kept against his Enemies. *Rot. Parl. 15. Hen. 6.*

In the twentieth, the Commons exhibite a Bill for the Guard of the Sea, ascertain the number of Ships, assess Wages, and dispose Prizes of any fortune, to which the King accordeth; and that the *Genouese* may be declared enemies for assisting the *Turks* in the spoyl of the *Rhode* Knights, and that the priviledges of the *Pruce* and *Hans* Towns Merchants may be suspended, till compensation be made to the English for the wrongs they have done them, to which the King in part accordeth. *Parl. 20. H. 6.*

The King by the Chancellor declareth in Parliament, *Anno* 23. That the Marriage with *Margaret*, the King of *Sicils* Daughter, was contracted for inducing the Peace made with *France*, *Parl. 23. H. 6.*

against

against which the Lords, as not by their advice effected, make Protestation, and enter it on the Roll.

Rot. Parl. 25. *Hen.* 6. *in* 3. In the 25. the King intended to pass in Person into *France*, and there to treat a Peace with the King, adviseth with the *N.* 6. Lords and Commons in Parliament, and Letters of Mart are granted against the *Brittains*, for spoil done to the *English* Merchants.

Parl. 27. *H.* 6. The Lord *Hastings*, and Abbot of *Glocester*, declare in Parliament, *Anno* 27. the preparation of the *French*, the breach by them of the Peace, the weak defence of *Normandy*, and the expiration shortly of the Truce, requiring speedy advice and remedy.

Parl. 29. *H.* 6. In the 29. it was enjoined by Parliament, to provide for defence of the Sea and Land against the *French*.

Parl. 33. *H.* 6. It was commanded by the King to the States assembled, *Anno* 33. to advise for well ordering of his House, payment of the Soldiers at *Callis*, guard of the Sea, raising of the Siege at *Barwick*, made by the *Scots* against the Truce, dispoiling of the number of 13000 Soldiers, arrayed the last Parliament, according of differences amongst the Lords, restraining transportation of Gold and Silver, and acquitting the disorders in *Wales*; of all which, Committees are appointed to frame Bills.

Edward 4. *Parl.* 7. *E.* 4. *Edward* the Fourth, by the Chancellor, de-

declareth in his seventh year to the Lords and Commons, that having made peace with *Scotland*, entred League with *Spain* and *Denmark*, contracted with *Burgundy* and *Britany* for their ayd in the recovery of his right in *France*, he had now called them to give their Counsels in proceeding, which Charge in a second Sessions was again proposed unto them.

The like was to another Parliament in his twelfth year. *Parl.* 1 . E. 4.

After this time their Journals of Parliament have not been well preserved, or not carefully entred; for I can find of this nature no Record, until the first of *Hen.* 7. wherein the Commons, by *Thomas Lovel* their Speaker, Petition the King to take to Wife *Elizabeth*, Daughter to *Edw.* 4. to which the King at their request agreeth. *Hen.* 7. *Rot. Parl.* 1 *Hen.* 7.

The next is the third of *Hen.* the 8. in which from the King, the Chancellor declareth to the three Estates the cause of that Assembly: The first to devise a course to resist the Invasion of the *Scots*, next how to acquit the quarrel between the King of *Castile*, and the Duke of *Geldres* his Allie; lastly, for assisting the Pope against *Lewis* King of *France*, whose Bull expressing the injuries done the Sea Apostolick, was read by the Master of the Rolls in open Parliament, The Chancellor, the Treasurer, and other *Henry* 8. *Parl.* 3. *H.* 8.

Lords ſent down to the Commons to confer with them.

Rot. Parl. 32. Hen. 8.

The laſt in the 32d. of the ſame year, where the Chancellor remembring the many troubles the State had undergone, in doubtful titles of Succeſſion, declareth, that although the Convocation had judged void the marriage of *Anne* of *Cleve*, yet the King would not proceed without the Counſel of the three Eſtates: The two Archbiſhops are ſent to theCommons with the Sentence ſealed, which read, and there diſcuſſed, they paſs a Bill againſt the Marriage.

Ex inſtrumen. Orig.

In all theſe paſſages of publick Counſels, wherein I have been much aſſiſted by the painful labour of Mr. *Elſing*, Clerk of the Parliament, and ſtill obſerve that the Soveraign Lord, either in beſt advice, or in moſt neceſſities, would entertain the Commons with the weightieſt cauſes, either forrain or domeſtique, to apt and bind them ſo to readineſs of charge, and they as warily avoiding it to eſchew expence; their modeſt anſwers may be a rule for ignorant liberty to form their duties, and humbly to entertain ſuch weighty Counſels at their Soveraigns pleaſure, and not to the wild fancy of any factious ſpirit. I will add one forraign example to ſhew what uſe hath been formerly made by pretending Marriages, & of Parliaments to diſſolve them, their firſt end ſerved.

Max-

Maximilian the Emperour, and *Ferdinand* of *Spain*, the one to secure his possessions in *Italy*, the other to gain the Kingdom of *Navarre*, (to both which the *French* King stood in the way) projected a Marriage of *Charls* their Grand-child, with *Mary* the King of *Englands* Sister, it was embraced, and a Book published of the benefits likely to ensue the Christian world by this match. Upon this ground, *Ferdinando* beginneth to incite *Henry* the 8th. to War with *France*, presents him with succours, and designs him *Guien* to be the mark; and *Dorset* is sent with men and munition to joyn with the *Spanish* Forces then on the Borders of *Navarre*: the noise is, they came to assist *Ferdinand* in the Conquest of that Kingdom; which though false, gained such reputation, that *Albret* was disheartned, and *Ferdinand* possessed himself of that his Successors since retained; his end served, the English Army weak and weather-beaten, are returned fruitless.

Tractat. matrimonial. 1510.

Ex literis orig. legator.

Maximilian then allureth the young and active King to begin with *France* on the other side; *Teroueu* and *Tournay* is now the object, whither *Henry* goeth with Victory, but better advised (with that pittance) makes an end by peace with *France*, whose aim and heart was set on *Millain*.

Ex tract. Hen. 8. & Maximilian. 1511.

A new bait the old Emperour findeth

Ex tract. orig.

out to catch the Ambitious young man, he would needs resign unto him the Empire, too heavy for his age to bear: The Cardinal *Sedunensis* is sent over to sign the Agreement, which he did, and *France* must now again be made an Enemy. To prevent this danger *Francis* released his Title to *Naples*, and offereth *Laogitia* his Daughter to *Maximilians* Grandchild *Charls*, at *Noyon*: this is acted in the dark, and at *Arno* the *French* Commissioners came up the back stairs with 60000 Florins, and they engrossed Covenants, when the abused King of *Englands* Ambassador *Pace*, went down the other; the good Cardinal returneth home, meeteth by the way this foul play of his Master, and writ to the King of *England*, not in excuse, but in complaint, *Contra perfidiam Principum*, an honest Letter. *Ferdinand* and *Maximilian* dead, *Francis* and *Charls* are Competitors for the Empire. *Henry* the 8th. is courted for his help by both; the one with the tye of Alliance (for the Infant *Dolphin* had affyed *Henry* the 8ths Daughter) the other with the like, and Daughter, he will make his Daughter a Queen *in præsenci*, which the *Dolphin* cannot do, and by his favour an Empress.

Ex tract. orig.

Ex litteris Ric. Pace Legat. Reg. Angliæ.

Ex literis Car. Sedunensis.

Ex literis Carol. Reg. Hisp.

To further *France* was but to win Ambition to prey upon all his Neighbours,

Ex literis Car. Imperat. original.

bours, the English King is won, and winneth for *Spain* the Imperial wreath, which *Charls* in two Letters I have of his own hand then thankfully confessed.

Extract. Wind. 1522. *Ex instru. orig. jurament.*

From *Aquisgrane* he cometh Crowned in hast to *England*, Wedded at *Windsor* the King's Daughter, contracteth to joyn in an Invasion of *France*, to divide it with his Father in Law, by the River of *Rodon*, and sweareth at the Altar in *Pauls* to keep faith in all.

Bourbon is wrought from *France*, and entreth *Provence* with an Army, paid with King *Henries* money; *Suffolk* passeth with the English Forces by *Picardy*: But *Charles* the Emperour, who should have entred *Guyen* faileth, drawing away *Burbon* from a streight Siege of *Marseilles*, to interrupt *Francis* then entred *Italy*, and so the enterprize of *France* is defeated, the French King is at *Pavie*, taken Prisoner by *Pescaro*, led to *Gron*, hurried into *Spain* by the Emperours Galleys, and forced at *Madrid* to a hard bargain, without privity of *Henry* the 8th. or provision of him, who had been at the greater charge of that War, Now the Emperour affecteth that Monarchy that hath ever since (as some say) infected the *Austrian* Family.

Ex literis Richardi Pace, & Johannis Russel.

Ex tract. Madristensi 526. *Ex Rot. Com. Russel & Pace.*

Rome, the fatal old Seat of Government,

Ex instru. orig. Carol. 5.

ment, must be the Seat of his Empire: *Burbon*, and after *Moncado* are directed to surprize it. *Angelo*, the observant Fryer, is sent before the Pope, consigned by tae Emperours Election, who meant (as his own instructions warrant) to restore that right again to the Imperial Throne.

Ex instru H. 8. Bryano & Gardinem.

Charls will follow him from *Barcellona* with an Army; but before, he must call a Parliament at *Toledo*, whether by election or affection, I dare not divine, that Assembly maketh Protestation against their Masters Marriage with *England*, and assign him *Isabella* of *Portugal* for a Wife; the Instruments are sent signed by the Imperial Notary to *Henry* the 8th. And *Charls* bemoaneth the streight he is forced into by them; but before all this he had wrought from *Rome*, a Dispensation for his former out-hand Marriage; sending not long after *Gonzado Ferdinando* his Chaplain, to invite the Earl of *Desmon* to rebel in *Ireland*.

Ex literis Cuthb. Tunstall. Episc. Lond. Legat. Hen. 8. in Hispan. Ex protestat. orig. Toletdonensi Parl.

Ex literis Car. Wolsey & Greg. Lusathis. Ex Instru. Signat. Ch. Im. Gonzado Ferdinand. Capel. suo dat. 24. Feb. Ex lib. N. N. N. Dom Car.

And to invite *James* the First, by promise of a Marriage to *Christian* of *Denmarks* Daughter, his Neece; to enter the *English* Borders, to busie the *English* King, for asking a strict accompt of that Indignity. *Henry* the 8th. with Providence and good success over-wrought these dangers, and by the League of *Italy* he forced him to moderate Conditions

Ex literis intercept. â Com. Northumb. Custod. March. Scotiæ. Ex tract. orig. in Arch. West. Ex tract. Cambrens. 1529.

at

at the Treaty of *Cambray*, 1529. He being made *Caput fœderis* against the Emperour.

I may end your Honours trouble with this one Example, and with humble prayers, That the Catholique may have so much of Princely sincerity, as not to intend the like, or my good gracious Master a jealous vigilancy to prevent it, if it should, *&c.*

THAT THE SOVERAIGNS PERSON is Required in the Great COUNCILS, OR ASSEMBLIES OF THE STATE,

As well at the Consultations as at the Conclusions.

Written by Sir *Robert Cotton*, Knight and Baronet.

LONDON,
Printed in the Year, 1679.

THAT THE SOVERAIGNS PERSON is Required in the Great COUNCILS, OR ASSEMBLIES OF THE STATE, &c.

SINCE of these Assemblies few Diaries, or exact Journal Books are remaining, and those but of late, and negligently entred, the Acts, and Ordinances only reported to Posterity are the Rolls, this question though clear in general reason, and conveniency, must be wrought for the particular, out of such incident proofs, as the Monument of Story and Records by pieces leave us. And to deduce it the clearer down, some essential circumstances

ſtances of name, time, place, occaſion, and perſons, muſt be in a general ſhortly touched, before the force of particular proofs be laid down. This noble body of the State, now called the Houſes in Parliament, is known in ſeveral Ages, by ſeveral names, *Concilia* the Councils in the old times, after *Magnum*, *Commune*, and *Generale*, *Concilium*, *Curia Magna*, *capitalis*, and *Curia Regis*; ſometimes *Generale Placitum*, and ſometimes *Synodi* and *Synodalia decreta*, although aſwell the cauſes of the Common-wealth as Church were there decided. The name of Parliament, except in the Abbots Chapters, not ever heard of until the Raign of King *John*, and then but rarely. At the Kings Court were theſe Conventions uſually, and the Preſence, Privy-Chamber, or other room convenient, for the King in former times as now, then uſed; for what is the preſent Houſe of Lords, but ſo, as at this time, and was before the firing the Palace at *Weſtminſter*, about the ſeventeenth of *Henry* the eighth, who then and there reſided.

Ex Conſiliis Reg. Saxon. Cantuar. Glanvil. lib. Ely.

Leges Ethelredi. Ingulphus. Croylandenſis. Regiſtra Monaſter.

Palatium Regale Weſtm.

Improbable it is to believe the King was excluded his own Privy Chamber, and unmannerly for gueſts to barr him the company, who gave to them their entertainment. It was at firſt as now *Edicto Principis*, at the Kings pleaſure. Towards the end of the *Saxons*, and in the

Regiſt. Elienſis.

the first time of the *Norman* Kings, it stood in *Custom-Grace*, to *Easter*, *Whitsontide*, and *Christmas* fixed. The Bishops, Earls, and Lords, *Ex more*, then Assembled (so are the frequent words in all the Annals) the King of course then revested with his imperial Crown by the Bishops and Peers assembling, in recognition of their preobliged faith and present service, until the unsafe time of King *John*, by overpotent and popular Lords, gave discontinuance to this constant grace of Kings, and then it returned to the uncertain pleasure of the Soveraigns summons. The causes then as now of such Assemblies, were provisions for the support of the State in Men and Money, well ordering of the Church and Common-wealth, and determining of such causes, with ordinary Courts *nesciebant judicare* (as *Glanvill* the grand Judge under *Henry* the second saith) where the presence of the King was still required, it being otherwise absurd to make the King assentor to the Judgments of Parliament, and afford him no part in the consultation. The necessity thereof is well and fully deduced unto us in a reverent monument not far from that grave mans time, in these words, *Rex tenetur omni modo personaliter interesse Parliamento, nisi per Corporalem ægritudinem detineatur.* Then to acquaint

Annales Monasteriorum. Liber de Bello.

Regist. de Wig.

Johannes Eversden. Matthew Paris. Hoveden.

Bracton. Glanvill. Fleta.

Modus tenendi Parliament.

acquaint the Parliament, of such occasion of either House, *Causa est quod solebat Clamor & Murmur esse pro absentia Regis, quia res damnosa & periculosa est toto Communitati Parliamenti & Regni, cum Rex à Parliamento absens fuerit, Nec se absentare debet, nec potest nisi duntaxat in Causa supradicta.* By this appeareth the desire of the State to have the Kings presence in these great Councils by express necessity. I will now endeavour to lead the practice of it from the dark and eldest times to these no less neglected of ours.

Ex Registris Concil. Cantuariæ.
Ex Consilio Withredi Regist.

From the year 720. to neer 900. during all the *Heptarchy* in all the Councils remaining composed *Ex Episcopis, Abbatibus, Ducibus, satrapis, & omni dignitate optimatibus, Ecclesiasticis scilicet & secularibus personis pro utilitate Ecclesiæ, & stabilitate Regni pertractand.* Seven of them are *Rege præcedente* and but one by deputy; and incongruous it were and almost non-sence, to bar his presence that is president of such an Assembly.

Ex Synodis & legibus Alfredi, Ethelredi, Edgari.
Ex Registr. Elien.
Ex Registr. Abingtonensi.
Chronicon de Waverly.

The *Saxon* Monarchy under *Alfred, Ethelred,* and *Edgar* in their Synods or *Placita generalia* went in the same practice and since. Thus *Ethelwald* appealed against Earl *Leofrick*; From the County and *generale Placitum* before King *Ethelred* and *Edgira* the Queen, against Earl *Goda* to *Eldred* the King at *London,*

Congre-

Congregatis Principibus & sapientibus Angliæ. In the year 1502. under *Edward* the Confessor, *Statutum est placitum magnum extra Londinum quod Normanni ex Francorum consuetud. Parliamentum appellant*, where the King and all his Barons appealed *Goodwin* for his Brother *Alureds* death, the Earl denyed it, and the King replyed thus, My Lords, you that are my liege men, Earls and Barons of the Land here Assembled together, have heard my Appeal and his Answer, unto you be it left to do right betwixt us.

Gesta Sancti Edwardi Gallice.

Alured. Rivalensis, vita Edwardi Confessoris.

At the great Council at *Westminster* 1072. in *Easter* week, the cause of the two Archbishops *Lanfrank* and *Thomas*, *ventilata fuit, in præsentia Regis Willielm.* And after at *Windsor*, *finem accepit in præsentia Regis.* At the same feast in the year 1082. (the usual time of such Assemblies) the King, the Archbishops, Bishops, Abbots, Earls, the chief Nobility of the Kingdom present (for so are the words of the Records) the cause between *Arsast* Bishop of *Norway*, and *Baldwine* Abbot of *Bury* was also argued, *Et ventilata in publica jubet Rex teneri Judicium Causis auditis Amborum.*

Regist. Cantuarien.

Regist: Sancti Edmundi.

The diligence of his Son, the Learned *Henry* the first, in executing of this part of his Kingly function is commended to Posterity, by *Walter Mape*, a Learned man, trained up, and in favour with *Henry*

Walterus Mape de nugis curialium.

Henry the second, in these words, *Omnia Regali more moderamine faciebat, neminem volebat agere justitia vel pace. Constituerat autem ad tranquillitatem omnium ut diebus vacationis, vel in domo magna subsidio copiam sui faceret, usque ad horam sextam*, (which was till twelve as we now account) *secum habens Comites, Baronet, Proceres, & Vavasores*, to hear and determine causes, whereby he attained the surname of *Leo Justitiæ* in all stories, and so out-went in quiet guidance of the State his best progenitors. The next of his name that succeeded is remembred every where for his debates and his disputes he had in person with *Thomas* the Archbishop, and others of his part, at the great Councils both at *London*, *Clarendon*, and *Northampton*, for redress of the many complaints of the Commons, against the outrages and extortions of the Clergy; one thousand five hundred and fifty seven, *Die Pentecostis apud sanctum Edmundum*, the same King *Diademate Insignitus*, with the Bishops, Abbots, Earls, and Barons of the Kingdom, sate daily himself and heard all the debates, concerning the Liberties and Charters of *Battle Abbey*. The interlocutory Speeches as well of the King, as Lords and parties are at full related in a Register of that Church.

Hen. Huntingdon.

Malmsbury.

Vita Tho. Cantuar. per Fitz-Stephanum.

Gesta Hen. 2.

Benedictio Abb. Authore.

Regist. Monast. de Bello.

The

The ſute between the Church of *Lincoln* and Saint *Albanes*, *in præſentia Regis Henry, Archepiſcop. & Epiſcop. omnium Angliæ, & Comitum & Baronum Regni*, was at *Weſtminſter* debated and ended: And had a love of memory and truth been a protector of the publick Records of the State, as awe of the Clergies cenſure was a guard to theirs, in tempeſtuous times, we had not been now left to the only friendſhip of Monks diligence; for example in this kind. At *Lincoln* the Archbiſhops, ſome Biſhops, but all the Earls and Barons of the Realm, *una cum Rege Johanne congregati ad colloquium de concordia Regis Scotiæ*, ſaith the Regiſter of that Church.

Regiſt. Lincoln.

Liber Burtoniens. Monaſterii.

This uſe under King *Henry* the third, needeth no further proof, than the Writ of ſummons (then framed) expreſſing that Kings mind and practice; It is *Nobiſcum & Prælatis & Magnatibus noſtris quos vocari fecimus ſuper præmiſſis tractare & Conſilium impendere*, which word *Nobiſcum* implieth plainly the Kings preſence; what the ſucceeding practice was, from the fifteenth year of the ſecond *Edward*, the proper Records of this inquiry (the Journal Books being loſt) I am enforced to draw from out the Rolls of Acts, wherein ſometimes by chance they are remembred. *Edward* the ſecond was pre-

Rot. Clauſ. Anno 59. H. 3.

Rot. Parl. 15. Edw. 2. sent in Parliament in the fifteenth year of his Reign at the complaint against the *Spencers*, and at the second Parliament that year, for the repeal of that banishment.

Rot. Parl. 4. Edw. 3. In the fourth of *Edward* the third, the King was present at the accusation of *Roger Mortimer*, but not at the Tryal.

Rot. Parl. Anno 5. Edw. 3. And the next year in the treaty of the French affairs.

In the sixth year *Intererat Rex in Causa Johannis de Gray & Willielmi de Zous.* The same year the second day in Parliament, the King was present at the debate about his Voyage into *Scotland.*

Rot. Parl. Anno 15. Edw. 3. In the fifteenth year the King in the Painted Chamber sitting with the Lords in consultation, the Archbishop after pardon prayed, that for better clearing himself, he might be tryed in full Parliament by his Peers; which was granted.

Rot. Parl. Anno 17. Edw. 3. In the seventeenth in *Camera Alba*, now the Court of requests, *Rex cum magnatibus conveniunt Communes super negotiis Regni.*

Chronicon Henrici Knighton. In the tenth of *Richard* the second, the King departed from the Parliament in some discontent, when after some time, Lords are sent to pray his presence, and inform his Majesty that if he forbear his presence amongst them

forty

forty days, that then *Ex antiquo Statuto*, they may return *absque domigerio Regis*, to their several homes.

Henry the fourth began his first Parliament the first of *November*, and was the twenty seventh of the same month at a debate about the Duke of *Brittany*, the thirtieth day the Cause of the Archbishop of *Canterbury* was before him proposed only. *Rot. Parl. Anno* 1. *Hen.* 4.

The third of *November* he was at the debate, whether the Commons had right of Judicature, yea or no. *Rot. Parl. Anno* 2 *Hen.* 4.

On the tenth he was with the Lords in their consultation about the expedition against the *Scots*, the creation of the Dake of *Lancaster*, and prohibition of a new sect for entring his Kingdom. Some Ordinances were at this time consulted of before him about the staple, and the sentence against *Haxey* after dispute revoked. *Rot. Parl.* 10. *Hen.* 4.

This King began his second Parliament, the twentieth of *January*, and on the ninth of *February* was present to make agreement betwixt the Bishop of *Norwich*, and *Thomas* of *Erpingham*. *Anno.* 2 *Hen.* 4; *Rot. Parl.*

On the twentieth day of the same month he was present at Council for repressing the *Welsh* Rebels; for revocation of stipends, and concerning the Priors Aliens.

On the 26. they advise before the King of the *Cistertians* order.

On the second of *March* of the Statute of Provisions, the Keeper of the privy Seal, of relieving the two Universities.

Rot. Parl. Anno 4 Hen. 4. And on the ninth of *March*, they mediate before the King a reconciliation betwixt the Earl of *Rutland* and the Lord *Fitzwater*.

Rot. Parl. Anno 5 Hen. 4. He also began a Parliament in the fifth year upon the fifteenth of *January*, and on the twentieth they advise before the King of guarding the Seas, and the *Welsh* Rebellion.

On the eighth of *February* the Earl of *Northumberland* is charged before the King, and in his presence, and by his permission, divers, of whom he knew no harm, were removed from the Court.

The next day at the Petition of the Commons, he took upon him to reconcile the Earls of *Northumberland* and *Westmerland*. And on the two and twentieth of *February* of the Earls of *Northumberland* and *Dunbarre*.

Rot. Parl. Anno 27 Hen. 6. In a Parliament of 27 of *Hen.* the *6.* a Challenge of seat in Parliament betwixt the Earls of *Arundel* and *Devonshire*, was examined and appointed by the KING with the advice of the Lords.

Duke

In that great Capital cause of the Duke of *Suffolk*, the 28 of *Hen. 6.* I find not the King once present at the debates, but the Duke appealing from his tryal by Peerage, to the King, is brought from out of the House of Lords to a private Chamber, where the King after the Chancellor in gross had declared his offence, and his refusal, the King himself (but not in place of judgment) adjudged his banishment. *Rot. Parl. Anno 28 Hen. 6.*

By the Rolls of *Edward* the fourth, it appeareth that he was many days, besides the first and last, in Parliament, and there was entred some Speeches by him uttered, but that of all the rest is most of remark, the reporter then present thus tells it. This of the Duke of *Clarence* and the King, *Tristis disceptatio inter duos tantæ humanitatis Germanos, nemo arguit contra ducem nisi Rex, nemo respondit Regi nisi dux*; some other testimonies are brought in, with which the Lords are satisfied, and so *Formârunt in eum sententiam damnationis*, by the mouth of the Duke of *Buckingham*, the Steward of *England*, all which was much distasted by the House of Commons. *Rot. Parl. Anno. Edw. 4.* *Registrum Crolanden.*

The Reign of *Henry* the seventh affords us upon the Rolls to one example. The Journal Books are lost, except so much as preserves the passages of eight days in the twelfth year of his Reign; in which the King was *Ex Chartis Anno. 12 H. 7.*

some days present at all debates, and with his own hand the one and thirtieth day of the Parliament, delivered in a Bill of Trade then read, but had the memorials remained, it is no doubt but he would have been as frequent in his Great Council of Parliament, as he was in the *Starr-Chamber*, where by the Register of that Court it appeareth as well in debate of private causes, that touch neither life nor Member, as those of publick care, he every year of all his reign was often present.

Ex Regist. Camera Stellata.

Of *Henry* the eighth, memory hath not been curious, but if he were not often present, peradventure, that may be the cause, which the learned Recorder *Fleetwood*, in his preface to the Annals of *Edward* the fifth, *Richard* the third, *Henry* the seventh, and *Henry* the eighth hath observed in the Statutes made in that Kings days, for which cause he hath severed their Index from the former: And much lay in the will of *Wolsey*, who ever was unwilling to let that King see with his own eyes.

Ex Annalibus Fleetwood Recordat. London.

Edward the sixth, in respect of his young years may be well excused, but that such was his purpose it appears by a memorial of his own hand, who proportioning the affairs of Council to several persons, reserved those of greatest weight to his own presence in these words. *These to attend the matters of State,*

Memorial. Ed. 6. propria manu.

that

that I will sit with them once a week to hear the debating of things of most impertance.

Unfitness, by sex, in his two succeeding Sisters, to be so frequently present as their former Ancestors, led in the ill occasion of such opinion and practice.

Most excellent Majesty, your most humble servant in discharge of obedience and zeal, hath hastned up this abstract, which in all humility he offers up unto your gracious pardon. Presumption to enter the Closet of your Council is far from his modesty and duty; what hath been your powerful Command, he hath made his Work, what is fit to be done with it, is only your divine judgment. He dares not say Presidents are warrants to direct; The success (is as worthy observation) as the knowledg of them, some times have made ill example by extension of Regal power, through ill Counsels with ill success. Some as bad or worse when the people have had too much of that, and the King too little, the danger no less. To cut out of either of these patterns to follow, were but to be in Love with the mischief, for the example. The clearer I present this to your Highness, the nearer I approach the uprightness of your heart, the blessed fortune of your happy Subjects: Pardon, most Sacred Majesty, that I offer up unto your admired wisdom, my weak, but dutiful observations out

of all the former gathering. In Consultations of State and decisions of private plaints, it is clear from all times, the King was not only present to advise and hear but to determine also; in Cases Criminal, and not of Blood, to bar the King a part were to exclude him the *Star-Chamber*, as far from reason as example. The doubt is then alone in Crimes meer Capital; I dare not commend too much the times that lost these patterns, either for the Causes or Effects; but wish the one and other never more. To proceed by public Act of Commons, Peers, and King, was most usual. Appeals are given by Law of *Hen.* 4. of this now in debate, the way I fear, as yet obscure, as great advice to State is is needful for the manner, as for the Justice. The example in the cause of the Duke of *Suffolk*, 28 *Hen*, 6. where the King gave judgment was protested against by the Lords. That of the Duke of *Clarence* of *Edw.* 4. where the Lords and the high Steward the Duke of *Buckingham* gave judgment, was protested against by the Commons; in both of these the King was sometimes present, but which of those may suit these times I dare not guess.

That of *Primo Rich.*2. of *Gomeneys* and *Weston*, accused by the Commons plaint for Treason, was tried by the Lords in absence of the King, but sentenced by the

the Lord *Scroop*, Steward for the King. The Accuſed were of the rank of the Accuſers, Commons and not Lords: How this will make a Preſident to judg in cauſes Capital, a Peer of Parliament, I cannot tell. But if I ſhould conceive a way anſwerable as well to Parliament as other Courts, if the King and the Lords were Tryers, and the Commons aſſenters to the judgment to hear together the Charge, and Evidence; The Lords as doth the Jury in other Courts, to withdraw, to find the Verdict, and then the Steward, for the King, to pronounce the Sentence. It paſſeth ſo by way of Act and Courſe that carrieth with it no exception, and likely to avoid all curious queſtions of your Highneſs preſence there.

If your humble ſervant hath in this expreſſion of his deſire to do you ſervice, preſumed too far, his Comfort is, that where zeal of duty hath made the fault, benignity of goodneſs will grant the Pardon.

A DISCOURSE OF THE LAWFULNESS OF COMBATS

To be performed in the presence

OF THE

KING,

OR THE

Constable and *Marshal*

OF

ENGLAND.

Written by Sir *ROBERT COTTON*, Knight and Baronet. 1609.

LONDON: Printed in the Year. 1679.

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A DISCOURSE OF THE LAWFULNESS OF COMBATS.

To be performed in the presence of the KING, &c.

COMBAT.

WHere differences could not be determined by legal proof or testimony, there was allowed the party his purgation;

Combat. Ex lib. 3. Const. Car. magni de testibus. Bract. l. 3. c. 18. fol. 137. tit. Corona.

Which was either { *Canonical* or *Legal.*

The first by Oath, and called *Canonical*, because it is Lawful.

The

The other, which was either *Per aquam candentem, ferrum ignitum*, or *Duellum*, called *vulgare*, because it was brought in by the barbarous people, without the pretext of any Law; until the *Gothish* and *Lombard* Kings, seeing their Subjects more addicted to Martial Discipline than to Civil Government, reduced those trials to Form and Rule: Which Constitutions are now incorporated in the Civil Law.

Leges Lombard. fol. 17. b. Luitprando Rege. Propter consuetudinem gent. legem impiam vitare non possumus.

From the Northern Nations (of which the *Saxons* and *Normans*, or *Northmanni* are part) it was brought into this Land; and although it grew long ago, both by the decrees of *Desiderius*, *Luitprandus*, and the Mother Church, discontinued amongst the *Lombards* as soon as they grew Civilized in *Italy*; yet it continued till of late with us, as a mark of our longer Barbarism: Neither would we in this obey the See of *Rome*, to which we were in many respects observant Children; which, for that in the Duel, *Condemnandus sæpe absolvitur, & quia Deus tentatur*, decreed so often and streightly against it.

De Papin. Hist. l. 9. c. 11. Lib. 5. Decret. 2. part. ca. 1. qu. 40.

In *England* this single Combat was either granted the party by licence extrajudicial, or legal process. The first was ever from the King as a chief flower of his Imperial Crown, and it was for exercise of Arms especially.

Rich. 1. Parl. Anno 20.

Thus did *Richard* 1. give leave for Tour-

Tournaments in five places in *England*; *inter Sarum & Winton*; *inter Stamford & Wallingford*, *&c. ita quod pax terræ nostra non infringetur, nec potestas justiciaria minorabitur*: For performance whereof, as likewise to pay unto the King according to their qualities or degrees, a sum of money proportionable, and that of a good value and advantage to the Crown, they take a solemn Oath.

The like I find in 20 *E.* 1. and 18 *E.* 3. granted *Viris militaribus Comitatus Lincoln*, to hold a Just there every year. *Richard Redman*, and his three Companions in Arms, had the licence of *Rich.* 2. *Hastiludere cum Willielmo Halberton, cum tribus sociis suis apnd Civitat. Carliol.* The like did *H.* 4. to *John de Gray*; and of this sort I find in records, examples plentiful.

20 E: 1. *Pat.* 18. *E.* 3. *in* 44. *part* 2.

Pat. part 2. *Anno* 19. *R.* 2. *m.* 16.

Pat. Anno 5. *H.* 4. *m.* 8.

Yet did Pope *Alexand.* the fourth, following also the steps of his Predecessors, *Innocentius* & *Engenius*, prohibit throughout all Christendom, *Detestabiles nundinas vel ferias quas vulgo Torniamenta vocant, in quibus Milites convenire solent ad ostentationem virium suarum & audaciæ, unde mortes hominum & pericula animarum sæpe conveniunt.* And therefore did *Gregory* the tenth send to *Edward* the first his Bull *pro subtrahenda Regis præsentia à Torniamentis à partibus Franciæ*, as from a spectacle altogether in a Christian Prince unlawful: For, *Gladiatorum scelerihus*

Lactan. divin. Instit. cap. 6.

leribus non minus cruore profundit qui spectat, quàm ille qui facit, saith *Lactantius*. And *Quid inhumanius, quid acerbius dici potest*, saith St. *Cyprian*, then when *homo occiditur in voluptatem hominis, & ut quis possit occidere peritia est, usus est, ars est. Scelus non tantùm geritur, sed docetur. Disciplina est ut perimere quis possit, & Gloria quòd perimunt.*

St. *Cyp. l.* 1. *Ep.* 2.

And therefore great *Constantine*, as a fruit of his conversion (which *Honorius* his Christian successor did confirm) established this edict: *Cruenta spectacula in otio civili & domesticâ quiete non placent: quapropter omninò Gladiatores esse prohibemus.* And the permission here amongst us no doubt, is not the least encouragement from foolish confidence of skill, of so many private quarrels undertaken.

Euseb. in vita. Constant. l. 3. *Sozomen. l.* 1. *c.* 8. *l.* 2. *Col. & Glad. Ex Cod. Theodos. l.* 5. *c.* 26.

Combats permitted by Law, are either in causes Criminal or Civil, as in appeals of Treason, and then out of the Court of the Constable and Marshal, as that between *Essex* and *Montford*, in the reign of *Henry* the first, for forsaking the Kings Standard.

Footlinus de Brackland cap. 12. *H.* 1.

That between *Audley* and *Chatterton* for betraying the fort of Saint *Saviours* in *Constant*, the eighth year of *Richard* the second.

2 *Part. pat.* 8. *R.* 2. *Memb.* 8. *Rot. Vascon. Anno* 9. *H.* 4.

And that of *Bartram de Usano*, and *John Bulmer*, *coram Constabulario & Mariscallo Angliæ de verbis proditoris*, *Anno* 9. *H.* 4. The form hereof appeareth in the

Plea

Plea Rolls, *Anno* 22. *E.* 1. in the case of *Vessey*: And in the Book of the Marshals Office, in the Chapter *Modus faciendi Duellum coram Rege.*

Placita coram Rege 22. *E.* 1.

In Appeals of Murther or Robbery, the Combat is granted out of the Court of the Kings Bench. The Presidents are often in the books of Law; and the form may be gathered out of *Bracton*, and the printed Reports of *E.* 3. and *H.* 4. All being an inhibition of the *Norman* Customs, as appeareth in the 68th. Chapter of their Customary; from whence we seem to have brought it.

Bract. l. 3. *c.* 21. *Anno* 17. *E.* 3. *& Anno* 9. *H* 4. *Ex Consuetud. Duc. Norman. cap.* 68.

And thus far of Combats in Cases Criminal.

In cases Civil, it is granted either for Title of Arms out of the Marshals Court; as between *Richard Scroop* and Sir *Robert Grosvenor*, *Citsilt*, and others; Or for Title of Lands by a Writ of Right in the Common-Pleas, the experience whereof hath been of late; as in the Case of *Paramour*; and is often before found in our printed Reports, where the manner of darraigning Battail is likewise; as 1 *H.* 6. and 13 *Eliz.* in the L. *Dyer* expressed.

Tit. de Equela multri fol. 145. *Breve Reg. orig. apud R. G. C.*

Reports Anno 1 *H.* 6. *Dyer Anno* 13. *Eliz.*

To this may be added, though beyond the Cognisance of the Common Law, that which hath in it the best pretext of Combat, which is the saving of Christian blood, by deciding in single fight, that

which would be otherwise the effect of publick War.

Such were the Offers of *R.* 1. *E.* 3. and *R.* 2. to try their right with the *French* King body to body. And so was that between *Charles* of *Arragon*, and *Peter* of *Terracone*, for the Isle of *Sicilie*, which by allowance of Pope *Martin* the 4th. and the Colledge of Cardinals, was agreed to be fought at *Burdeaux* in *Aquitain*. Wherein (under favour) he digressed far from the steps of his Predecessors, *Eugenius*, *Innocentius*, and *Alexander*, and was no pattern to the next of his name, who was so far from approving the Combat between the Dukes of *Burgundy* and *Glocester*, as that he did inhibit it by his Bull; declaring therein, that it was *Detestabile genus pugnæ, omni divino & humano jure damnatum, & fidelibus interdictum*; And he did wonder & grieve, *quod ira, ambitio, vel cupiditas honoris humani ipsos Duces immemores faceret Legis Domini & salutis æternæ, qua privatus esset quicunque in tali pugna decederat: Nam sæpe compertum est superatum fovere justitiam: Et quomodo existimare quisquam potest rectum judicium ex Duello, in quo inimicus Veritatis Diabolus dominatur.*

Rog. Hoveden & Adam Merimuth in vita E. 3.
Rot. Fran. Anno 7. R. 2. m. 21.
Compane de la saughe Regali & Spagna. f. 110.
Joan. de Molina Chron. de Loys Reg. de Aragon. fol. 43.
Bulla Martini 5. dat in Kal. Maij Anno Pontific. 8.

And thus far of Combates, which by the Law of this Land, or leave of the Soveraign, have any Warrant.

It rests to instance out of a few Records,

cords, what the Kings of *England*, out of Regal Prerogative have done, either in restraint of Martial exercises, or private quarrels, or in determining them when they were undertaken: And to shew out of the Registers of former times, with what eye the Law and Justice of the State did look upon that Subject, that durst assume otherwise the Sword or Scepter into his own hand.

The restraint of Tournaments by Proclamation is so usual, that I need to repeat, for form sake, but one of many. *Placita anno 29. & 31. E. 1.*

The first *Edward*, renowned both for his Wisdom and Fortune, *Publice fecit proclamari, & firmiter inhiberi, ne quis, sub forisfactura terrarum & omnium tenementorum, torneare, bordeare, justas facere, aventuras quærere, seu alias ad arma ire præsumat, sine Licentia Regis speciali.*

By Proclamation *R.* 2. forbad any but his Officers, and some few excepted, to carry any Sword, or long Bastard, under pain of forfeiture and Imprisonment. *Rot. claus. anno 19. R. 2. dat. 26. Feb.*

The same King, in the 19th. of his reign, and upon the Marriage with the *French* Kings Daughter, commanded by Proclamation, *Ne quis Miles, Armiger seu alius Ligeus aut Subditus suus, cujuscunque status, aliquem Francigenam, seu quemcunque alium qui de potestate & obedientia regis existerit*, upon what pretence soever, *ad aliqua facta Guerrarum, seu actus armorum exigat, sub forisfactura omnium quæ Regi forisfacere poterit.* *Claus. in dorso 19. R. 2.*

And as in the Kings power it hath ever rested to forbid Combates, so it hath been to determine and take them up.

Com. St. Alban. 22. *R.* 2.

Thus did *R.* 2. in that so memorable quarrel between *Mowbray* and *Hereford*, by exiling them both. And when Sir *John de Anestie*, and *Tho. de Chatterton*, were ready to fight, *eandem querelam Rex in manum suam recepit*, saith the Record.

2 *Pars pat. anno* 8. *R.* 2. *Rot. Vascon. anno* 9. *H.* 4. *m.* 14.

And *De mandato Regis direptum est prælium inter Johannem Bolmer, & Bartramum de Vesana* in the time of *Henry* the fourth.

Sir *John Fitz-Thomas* being produced before the Earl of *Glocester*, Deputy of *Ireland*, and there Challenged by Sir *William de Vessy* to have done him wrong, in reporting to the King, that Sir *William* aforesaid should have spoken against the King defamatory words, of which Sir *John* there presented a Shedule: *Willielmus, audito tenore Schedulæ prædictæ, dementitus est prædictum Johannem, dicendo; mentitus est tanquam falsus, & proditor, & denegavit omnia sibi imposita, & tradidit vadium in manum Justiciarij, qui illud admisit. Et prædictus Johannes advocavit omnia & dementitus est simil. dictum Willielm.* Whereupon the Combat was granted, and the time and place inrolled: but the Process was adjourned into *England* before the King; who

Placita coram Rege, 22. *E.* 1.

who with his Council examining the whole proceeding, and that *Quia Willielmus attachiatus fuit ad respondend. Johanni prædicto super diffamatione principaliter, & non sit citatus in Regno isto placitare in Curia Regis, placita de diffamationibus, aut inter partes aliquas, Duellum concedere in placitis de quibus cognitio ad curiam Regis non pertinet*; And for that the Judge, *vadia prædictorum Johannis & Willielmi cepit priusquam Duellum inter eos consideratum & adjudicatum fuit, quod omnino contra legem est & consuetudinem Regni:* Therefore, *per ipsum Regem & Concilium concordatum est, quod processus totaliter adnulletur:* And that the said *John* and *William eant inde sine die, salva utrique eorum actione sua, si alias de aliquo in prædicto processu contento loqui voluerint.*

Rot. Parl. anno 23. E. 1.

In a Combat granted in a Writ of right, *Philip de Pugil.* one of the Champions, *oppressus multitudine hominum se defendere non potuit:* Whereupon the people against him *in perpetuam defamationem suam in eodem Duello Creantiam proclamabant*, which the King understanding, *Assensu Concilii statuit, quod prædict. Philippus propter Creantiam prædict. liberam legem non omittat, sed omnibus liberis actibus gauderet, sicut ante Duellum gaudere consuevit.*

What penalty they have incurred, that without law or license have attempted the practice of Arms, or

their own Revenge, may somewhat appear by these few Records following.

Pat. in dors. 4. H. 3. *Conc. Trid. Sess. 9. Tit. Decreta Reform. Ex Con. Biturien. fol. 1022.* *Claus. anno 3. E. 1. m. 2.*

William Earl of *Albemarle* was Excommunicated *Pro Torniamento tento contra præceptum Regis.* To which agreeth at this day for the Duel the Council of *Trent*, & that held at *Biturio* in *Anno* 1584

Parl. anno 24. H. 6.

John Warren, Earl of *Surrey* was fined at a thousand marks *pro quadam transgressione in insultu facto in Alanum de la Zouch.*

Talbois was committed to the Tower for attempting to have slain the Lord *Cromwel.*

And because *Robertus Garvois insultum fecit, & percussit Edwardum filium Willielmi, inquisitio facta est de omnibus tenementis & catallis prædicti Roberti.*

Placita de quo warranto anno 8. R. 2. Sussex.

Edw. Dallingrige accused by Sr. *John St. Leger* before the Kings Justices *pro venatione, & aliis transgressionibus*, answered, that these accusations were false, and threw down his Glove, and challenged *disrationare materias prædictas versus prædictum Johannem per Duellum. Sed quia contra legem terræ vadiavit inde Duellum*, he was committed to Prison, *quousque satisfaceret Domino Regi pro contemptu.*

Sir *Nicholas de Segrave*, a Baron, Challenged Sir *John de Cromwel*, and contrary to the Kings prohibition, because he could not fight with him in *England*, dared him to come and defend himself in *France*: therein (as the Record saith) subjecting

jecting as much as in him lay, the Realm of *Engl.* to the Realm of *France*, being stayed in his passage at *Dover*, was committed to the Castle, & brought after to the Kings Bench, & there arraigned before the Lords, confessed his faults, & submitted himself to the King, *de alto & basso*: Wherefore judgment is given in these words, *Et super hoc Dominus Rex volens habere avisamentum Comitum, Baronum, Magnatum, & aliorum de consilio suo, injunxit eisdem, in homagio, fidelitate & ligeantia quibus ei tenentur, quod ipsi considerent qualis pœna pro tali facto fuerit infligenda. Qui omnes, habito super hoc consilio, dicunt quod hujusmodi factum meretur pœnam amissionis vitæ*, Whereupon he was committed to the Tower, & *Ro. Archard*, that attended him in *France*, was committed to prison, arraigned, and fined at 200. marks. In the end, and after much intercession, the L. *Segrave* was pardoned by the King, but could not obtain his liberty, until he had put in security for his good behaviour.

Placita coram Rege Trin. 33. E. 1.

But this course holdeth proportion with an antient law made by *Lotharius* the Emperor, in these words, *De his qui discordiis & contentionibus studere solent, & in pace vivere noluerint, & inde convicti fuerint, similiter volumus, ut per fidejussores ad nostrum Palatium veniant, & ibi cum nostris fidelibus considerabimus quid de talibus hominibus faciendum sit.*

Ex legi Longobard. 45. circa annum 830.

A BRIEF ABSTRACT Of the Question of PRECEDENCY BETWEEN ENGLAND AND SPAIN.

Occasioned by Sr. *Henry Nevil* the Queen of *Englands* Ambassador, and the Ambassador of *Spain*, at *Calais*, Commissioners appointed by the *French* King, who had moved a Treaty of Peace in the 42. year of the same Queen.

Collected by *Robert Cotton* Esq; at the commandment of her Majesty. *Anno Domini*, 1651.

LONDON,
Printed in the Year, 1679.

A BRIEF

ABSTRACT

Of the Question of Precedency between *England* and *Spain*, &c.

Prece-

Precedency of England *in respect of the Antiquity of the Kingdom.*

TO ſeek before the decay of the *Roman* Empire the antiquity of any Kingdom is meer vanity, when as the Kingdoms of Chriſtendom, now in being, had their riſing from the fall thereof; at which inſtant *Vortigern* a Native of this Iſle, firſt eſtabliſhed here a free Kingdom four hundred and fifty years after Chriſt, and ſo left it to the *Saxons*, from whom her Majeſty is in deſcent Lineal; and it is plain, that as we were later than *Spain* reduced under the *Roman* yoak, ſo we were ſooner infreed.

Subſequence of Spain.

Spain, ſince the diſſolution of the *Roman* Empire entituled no King, till of late, for *Atalaricus* from whom they would, upon ſlender warrant, ground their diſſent, was never ſtiled *Rex Hiſpaniæ*, but *Gothorum*, and the Kingdom of *Caſtile*,

Castile, wherein the main and fairest antiquity of *Spain* rested, begun not before the year of Christ 1017. whereas they were but Earls of *Castile* before; so that the Kingdom of the *English* began (which was always as *Beda* observeth a Monarch in a *Heptarchie*) 460. years at the least before the Kingdom of *Castile* or *Spain*.

Rodericus Sanctius. pag. 312.

Beda.

Precedency of England *in respect of Antiquity of Christian Religion.*

JOSEPH of *Arimathea* planted Christian Religion immediately after the passion of Christ, in this Realm.

Baronius.

And *Aristobulus* one of them mentioned by Saint *Paul*, *Romans* 6. was *Episc. Brittanorum*, and likewise *Simon Zelotes*.

Dorotheus.

The first Christian King in *Europe* was *Lucius Surius*.

Beda.

The first that ever advanced the Papacy of *Rome*, was the Emperor *Constantinus* born at *York*. Of whom in the *Roman* Laws near his time is written, *Qui veneranda Christianorum fide Romanum munivit imperium*; And to him peculiarly more than to other Emperors are these Epithetons attributed, *Divus Divæ memoriæ, divinæ memoriæ orbis Liberator, quietis fundator*, *Reipublic. instaurator, publicæ*

Baronius & Donaco Constantini.

In inscriptionibus antiquis.

publicæ libertatis auctor, Magnus Maximus, Invictus; Restitutor urbis Romæ, atque orbis.

Fasciculus temporis. And there have been more Kings and Princes of the blood Royal, Confessors and Martyrs in *England*, than in any one Province in *Europe*.

And from *Ethelbert* King of *Kent*, (Converted *Anno* 596) until this day, Christianity hath been without interruption continued.

Subsequence of Spain.

In the time of *Claudius*, Saint *James* preached in *Spain*, but gained only nine *Tarapha.* Souls. So did he in *Ireland*, as *Vincentius* saith; and they cannot count Christian Religion to be then planted in *Spain*, which shortly after was first tainted with the Heresie of *Priscilian*, then with *Gothish* Arianism, and after defaced with *Moorish* Mahumetism from 707 years after *Tarapha.* Christ, in continuance 770 years, until *Ferdinando*, King of *Arragon*, and *Castilia* utterly expelled the *Moors*.

Precedency of England *in respect of the more absolute Authority Political.*

THE Queen of *Englands* power absolute in acknowledging no superior,

rior, nor in vassallage to Pope or Emperor. For that subjection which by King *John* was made to *Innocentius* the third, after in Parliament, *Per præceptum Domini Papæ septimo Julii, Cum fidelitate & homagio relaxatur omnino.* *Eulogium lib. 5.*

Sir *Thomas Moore* in his debellation, saith, the Church of *Rome* can shew no such deed of subjection, neither that the King could grant it of himself. And *Eugubinus* in his defence of *Constantines* donation, nameth not *England*, where he recited all the feodary Kingdoms of the *Papacy*; the *Peter-pence* were not duties but *Eleemosyna Regis*, neither the *Rome-Scot*, but *Regis larga benignitas: Parem non habet Rex Angliæ in Regno suo; multo fortius nec superiorem habere debet*, saith *Bracton.* *Ex legibus Sancti Edwardi.* *Ex legibus Canuti.*

Ipse non debet esse sub homine, sed sub Deo, & habet tantum superiorem Judicem Deum: Likewise in appointing Magistrates; pardoning Life, Appeal, granting priviledges, taking homage; and his *Jura Majestatis* not limited in *censu nummorum*, *Bello judicando*, *Pace ineunda.* *Bracton.*

Eleutherius the Pope, 1400 years ago, in his Epistle to *Lucius* King of *Brittain*, stiled him *Vicarius Dei in regno suo*, so is the King of *England* in *Edgars* Laws; and *Baldus* the Lawyer saith, *Rex Angliæ est Monarcha in regno suo*; and *Malmsbury*, *Post conversionem ad fidem tot & tantas* *Baldus.* *Malmsbury.*

tantas obtinuit Libertates quot imperator imperia.

Subsequence of Spain.

The King of *Spain* hath no Kingdom, but is feodary either to *France* or *Castilia*, enthralled by oath of subjection and vassallage, from King *Henry*, to *Charles* the fifth of *France* 1369. *Ex fœdere contracto*: And for the *Netherlands*, there is homage due to the *French* King, or the *Papacy*, as *Arragon* to *Innocentius* the third, by King *Peter* 1204. confirmed by *Ferdinand* and *Alphonsus* 1445. and from *James*, by the like oath, 1453.

And to *Sardinia* and *Corsica* the King of *Arragon*, from the Bishops of *Rome*, were under oath of subjection invested: *Ex formula fiduciæ.*

The Kingdom of *Portugal* in vassallage to the Pope under an Annual Tribute.

And the *Canaries*, *Hesperides*, and *Gorgon* Islands subjected to the See of *Rome*, under the chief Rent of four hundred *Florins*, by *Lewis* King of *Spain*, 1043.

Of both the *Indies Alexander* did reserve the regalities; of *Sicilia*, the Church is chief Lord. *Ex Eugubino.*

And *Granado* and *Navarre* were made feodary to the Pope, under *Julius* the second.

Naples

Naples at every change sendeth a *Palfrey*, as a *Heriot*, due to the Church of *Rome*, and of the Empire he holdeth the Dukedom of *Millain*.

So that it is questionable among *Civilians*: whether he be *Princeps* which holdeth in *feodo* all of others.

His absolute authority restrained in *Arragon*, by *Justitia Arragonica*. In *Biscay* and other places, by particular reservations. And his *Jura Majestatis in Censu Nummorum, Bello judicando, Pace ineunda*, &c. Limited by the priviledges of the State, as at *Brabant* and elsewhere in his *Spanish* Territories; *Ex propriis constitutionibus & privilegiis*.

Precedency of England *in respect of more absolute authority Ecclesiastical.*

HER Majesties power more absolute in this (confirmed by antient Custom and priviledg) than any other Christian Prince. For no *Legat de Latere* in *England*, *de jure* allowed, but the Archbishop of *Canterbury*. *Ex Ranulpho Nigro.*

If any admitted by curtesie, he hath no Authority to hold plea in the Realm, contrary to the Laws thereof: *Placita 2 Hen. 4.* and before he was admitted and entered the Realm, he was to take oath, to do nothing derogatory to the

King and his Crown. *Placita Anno primo Henr.* 7. No man might denounce the Popes Excommunication, nor obey his Authority on pain to forfeit all his goods, without assent of the King or his Council. *Placita* 23. and 34 *Edw. Rot. Dunelm.*

Malmsbury. *Henry* the first called a Provincial Council, so did *Canutus* and others.

No appeal to *Rome* without the Kiugs Licence: *Anno* 32 & 34 *Edw.*1. Inventure of Bishops and Churchmen, in the Kings hand. *Ex Matt. Paris & Hen. Huntington.*

De gestis Pontific, Donelm Placita. 32 *Edw.* 1. and in the 32 *Edw.* 3. Where the reason of the Kings Ecclesiastical Authority, to suspend or bestow Church-livings is yielded, *Quia reges Anglie unguntur in Capite.*

Subsequence of Spain.

The King of *Spain* can prescribe no custom to prohibit the Popes Legat, nor useth any Authority Penal over the Clergy; *Spain* can produce no Example of any Provincial Council by call of the King. For *Bodin. lib.* 1. *cap.* 6. towards the end writeth, that the Kings of *Spain*, *Non sine magna mercede impetraverunt Sixti Pontificis Romani rescripto ne perigrinis sacerdotia tribuerentur.*

Appeals

Appeals from the King to *Rome* allowed. So the Kings of *Spain* have meerly no power Ecclesiastical, having dispoiled himself of all, by inthralling their Kingdom to the Church of *Rome*.

Precedency of England *in respect of Eminency of Royal Dignity.*

THE Kings of *England* are anointed as the Kings of *France*, who only have their preheminence before other Kingdoms declared by miracle, in the cure of the *Regius morbus*, which they can effect only; and that of antiquity: For *Edward* the Confessor healed many. *Ex libro Barnwellensis Cœnobiæ.*

2. They are superiour Lords of the Kingdom of *Scotland* and *Man*, and *Vicarii Imperii*; as *Edward* the third and *Oswald* intituled *Rex Christianissimus: Ve. Beda lib.* 1.

3. They are named *Filii adoptivi Ecclesiæ*, as the Emperor *Filius Primogenitus*, and the King of *France*, *Filius natu minor*: *vide Platin.* *Platina.*

4. They are accounted among *Reges Superillustres*, in this order: *Imperator*, *Rex Franciæ*, *Rex Angliæ & Franciæ*. *Vide Corsettus.* *Corsettus.*

5. *England* in the General Councils at *Constance* and *Pisa*, was made a Nation,

Ex lib. Sacrarum Ceremoniar. when as all Christianity was divided into four Nations, *Italicam, Gallicam, Germanicam, & Anglicam. Ex lib. sacrarum Ceremoniarum Ecclesiæ Romanæ.*

6. Whereupon, seat accordingly was allowed at the three General Councils, *viz. Constance, Pisa, Sienna*, to the *English* Ambassadors next to the Emperour on the left hand, and to the King of *France* on the right hand: which were their Ancient seats before the *Spaniards* at *Basil* 1431. begun to contend for Precedency.

Where it was in the first Session ordered, that all Legats should hold such their places as they had enjoyed heretofore, according to their worth and antiquity: Yet in the Council of *Trent* the precedency of *France* with *Spain* was made questionable.

Augustus de Cavelles, as the strongest reason to bar the *French* Interest, inferred the Queen of *England* from her Ancestors, both in respect of Inheritance, Conquest and Gift, *de jure* Queen of *France*. By which reason when he doth shake or overthrow (as he thinketh) the Precedency of *France*, he doth consequently strengthen the Precedency of *England*.

And in Treaty between *Henry* the seventh, and *Philip* of *Castile*, 1506. the Commissioners of *England* did subsign before the other. And in the Treaty of Marriage

Marriage with Queen *Mary*, *Anno* 1553. those of *England* are first rehearsed. And at *Burbrough Anno* 1588. they gave it to her Majesties Ambassadors.

And yet in respect of the Eminency of this Royal Throne, to the See of *Canterbury* was granted by *Urbane*, at the Council of *Claremount*, *Anno* 1096. for ever, the seat in General Council, at the Popes right foot, who at that time uttered these words; *Includamus hunc in orbe nostro tanquam alterius orbis Pontificem Maximum.*

Subsequence of Spain.

1. The Kings of *Castile* are never anointed, neither hath the *Spanish* Throne that vertue to endow the King therein invested, with the power to heal the Kings evil: For into *France* do yearly come multitudes of *Spaniards* to be healed thereof.

2. No Kingdom held in fee of him.

3. *Spain* then not remembred one of the Sons of the Church.

4. The King of *Spain* placed last after the King of *England*, *inter superillustres*, by the said *Corsettus*.

5. The Kingdom was then comprised under *Italica natio*, and no Nation of it self, as in old it was called *Iberia minor*, as a member of *Italy*, *Iberia major*. *Virgilius.*

Cosmographia. *England* being *Britannia major.*

Garsius. At which time the *Spaniard* contented himself with the place next to the King of *France.*

Precedency of England *before* Spain, *in respect of the Nobility of Blood.*

HEr Majesty in Lineal descent is deduced from Christian Princes for 800 years, by *Ethelbert* a Christian 596. and the Matches of her progenitors most Royal with *France*, *Germany*, *Spain.*

Subsequence of Spain.

For their Antiquity of descent as Kings of *Spain* is chiefly from the Earls of *Castilia* about 500 years since. *Vide Tarapha.*

For they cannot warrant their descent, from *Atalaricus* the *Goth*, and as Dukes of *Austria* from the Earls of *Hapsburgh* only about 390 years since.

Their matches anciently for the most part with their subjects, and of late in their own blood.

Precedency of England, *in respect of antiquity of Government.*

HEr Majesty having reigned now most happily 42 years.

This

This we would not have alledged, but that the *Spanish* Ambassador at *Basil*, objected in this respect the minority of *Henry* the sixth.

Her sex herein nothing prejudicial, when as both divine and humane Laws do allow it, and accordingly *Spain*, *England*, and *Hungary*, insomuch, that *Mary* Queen of the last, was always stiled, *Rex Maria Hungariæ. Vide Tilius.* *Tilius.*

Subsequence of Spain.

The King of *Spain* yet in the Infancy of his Kingdom.

For the Precedency may be alledged, viz.

The Antiquity of the Kingdom, when as *Castile*, *Arragon*, *Navar* and *Portugal*, had their first Kings about 1025. *Anno Christi* 1025.

The ancient receiving of the Christian Faith, by *Joseph* of *Arimathea*, *Simon Zelotes*, *Aristobulus*, yea, by St. *Peter* and St. *Paul*, as *Theodoretus*, and *Sophronius* do testifie.

The Kingdom is held of God alone, acknowledging no superiour, and in no vassalage to the Emperour or Pope, as *Naples*, *Sicilia*, *Arragon*, *Sardinia*, and *Corsica*, &c.

Sir *Thomas Moore* denyeth that King *John* either did, or could make *England* subject to the Pope, and that the Tribute was not paid (pag. 296.) but the *Preter-*

pence, were paid to the Pope by K. *John*, by way of Alms.

The absolute power of the King of *England*, which in other Kingdoms is much restrained.

1415. *England* is accompted the fourth part of Christendom; For in the Council of *Constance*, all Christianity was divided, in *nationem*, viz. *Italicam*, *Germanicam*, *Gallicanam & Anglicanam*, and accordingly gave voices.

England in the opinions of the Popes is preferred, because in it is contained in the Ecclesiastical division, two large Provinces, which had their several *Legati nati* when as *France* had scantly one.

Anno Christi. The Emperour is accompted *major filius Papæ*, the King of *France*, *filius minor*, the King of *England*, *filius adoptivus*.

The Archbishops of *Canterbury*, are accompted by the people, *tanquam alterius orbis Papæ*, and anointed to have place in General Councils, at the Popes right foot.

The title of *Defensor fidei*, as honourably, and as justly bestowed upon the Kings of *England*, as *Christianissimus* upon the *French*; or *Catholicus* upon the *Spaniard*.

1338. *Edward* the third, King of *England*, was created by the Emperour, *Vicarius Perpetuus Imperii*; *cum jure vitæ necisque in omnes Imperii subditos*, and the Kings of

1065. *England*, *Papæ Vicarii*, by Pope *Nicolas* the

the second, *vide COPGRAVE.*

Innocentius the fourth, the Pope said, *vere hortus deliciarum est Anglia, vere puteus inexhaustus ubi multa abundant*, &c. 1246.

King *Hen.* 2. elected King of *Jerusalem* by the Christians. 1185.

Richard the first, conquered the Kingdom of *Cyprus*, and gave it unto *Guy Lusignan*, whose posterity reigned there until of late years. 1191.

Kings of *England* are superiour Lords of the Kingdom of *Scotland*, and are absolute Kings of all the Kingdom of *Ireland.*

England is not subject to Imperial and Roman Laws, as other Kingdoms are, but retaineth her ancient Laws, and *Pura municipalia.*

King *Henry* the sixth was Crowned King of *France* at *Paris.*

The Kings of *England* did use the stile of a Soveraign, viz. *Altitonantis Dei, Largiflua Clementia, qui est Rex Regum & Dominus Dominorum,*

Ego Edgarus Anglorum βασιλὺς Omniumque Regum Insularumque Oceani Britannici circumjacentium, cunctarumque Nationum quæ infra eam includuntur, Imperator ac Dominus.

A REMONSTRANCE OF THE TREATIES OF AMITY AND MARRIAGE

Before time, and of late, of the House OF *AUSTRIA* and *SPAIN*, With the Kings of *England*, to advance themselves to the Monarchy of *Europe*.

Written by Sir *ROBERT COTTON*, Knight and Baronet.

LONDON:

Printed in the Year, 1679.

A REMONSTRANCE OF THE TREATIES OF AMITY AND MARRIAGE

Before time, and of late of the House of *AUSTRIA* and *Spain*, &c.

Most Excellent Majesty,

WE your Lords Spiritual and Temporal, and the Commons of your Realm Assembled in this your Parliament, having received out of your meer grace, your Royal command, to declare unto your Highness our advice and Counsel, for the further continuing, or final breaking of the two Treaties between your Majesty, the Emperor, and the *Spanish* King, touching the rendition of the Palatinate, to the due and former obedience of your Illustrious Son the Prince Palatine; and that

that of Marriage, between the Lady *Mary*, Infant of *Spain*, and the most excellent Prince your Son, now Prince of *Wales*: We conceive it not unfit to offer up to your admired wisdom and consideration, these important Motives that induced our subsequent advice and resolution.

By contemplation whereof, we assume to our selves that your Majesty apparently seeing the infinite Calamity fallen of late unto the Christian world, by means of these disguised Treaties of Amity, and Marriage before time, frequently used with your progenitors, and now lately with your self by the House of *Austria* and *Spain*; to advance themselves to the Monarchy of *Europe*, will graciously be pleased to accept our humble advice.

1503. *Maximilian* the Emperor, and *Ferdinand* of *Spain*, uniting by Marriage the possessions of the House of *Austria*, the *Netherlands*, *Arragon*, *Castile*, *Sicilia*, and their new discoveries, to one succeeding heir, began (though afar off) to see a way whereby their Grandchild *Charles* might become the Master of the Western world, and therefore each endeavoured by addition of Territories, to facilitate that their desired end.

France was the only obstacle, whose ambition and power then was no less than.

than theirs; he lay in their way for *Gelders*, by siding with Duke *Charls*; for *Navarre*, by protecting *Albret* their King; for their peeces in *Italy*, by confederation with the State of *Venice*; and for *Naples* and *Millain* by pretence of his own. They were too weak to work out their way by force, and therefore used that other of craft.

Lewis is offered for his Daughter *Claude* the Marriage of *Charls* their Grand-child, it is at *Bloys* accepted, and to them confirmed by Oath: the claim of *France* to *Naples* by this released, one hundred thousand Crowns yearly, by way of recognition only to *France* reserved, who is besides to have the investiture of *Milain* for a sum of money, which the Cardinal *D'amboyes*, according to his Masters Covenant, saw discharged.

Ferdinand thus possessed of what he then desired, and *Maximilian* not meaning to strengthen *France* by addition of that Dutchy, or repayment of the money, broke off that Treaty to which they were mutually sworn, affiancing *Charls* their Heir to *Mary* the Daughter of *Henry* the 7th. to whose Son *Arthur*, *Ferdinand* had Married *Katharine* his youngest Daughter. 1506.

This double knot with *England*, made them more bold (as you see they did) to double with *France*: but the Prince of

of *Wales* his untimely death, and his fathers that shortly followed, enforced them to seek out, as they did, another tye, the spirit and power of *Lewis*, and their provocations justly moving it; they make up a second Marriage for *Katharine* with *Henry* the eighth, Son of
1510. *Henry* the seventh; and are enforced to make a Bull dated a day after the Popes death to dispence with it; and consummate *per verba de præsenti*, by Commissioners at *Calis*, the former Nuptials of *Charls* and *Mary*, publishing a Book in print of the benefit that should accrew to the Christian world by that Alliance.

Henry the Eighth left by his Father young and rich, is put on by *Ferdinand* to begin his right to *France* by the way
1512. of *Guyen*; and to send his forces into *Spain*, as he did, under the Marquess *Dorset*, to joyn with his Father in Law for that design, by reputation whereof *Albret* of *Navarre* was enforced to quit that State to *Spain*; who intended as it proved, no further use of the *English* Army, than to keep off the *French* King from assisting *Albret*, until he had possessed himself of that part of *Navarre*, which his successors ever since retain. For, that work ended, the *English* Forces were returned home in Winter, having nothing advanced their Masters Service.

The

The next year to assure *Henry* the eighth, grown diffident by the last carriage of *Maximilian* and *Ferdinand*, whose only meaning was to lie busying of the *French* King at home, to make an easie way abroad to their former ends, project to the *English* King an enterprise for *France*, to which they assured their assistance, by mutual confederacy at *Mecklin*; for which *Bernard de Mesa*, and *Lewis de Carror*, for *Castile* and *Arragon*, and the Emperor in person gave oath, who undertook, as he did, to accompany *Henry* the eighth to *Turwyn*.

Ferdinand in the mean time dispatching the Vice-roy of *Naples* into *Italy*, to busie the *French* King and *Venetian*, that the *English* King with facility might pursue the conquest of *France*.

Henry the Eighth had no sooner distressed the *French* King, but *Ferdinand*, respecting more his profit than his faith, closed with *Lewis*, who renounced the protection of *Navarre* and *Gelders*, so he and *Maximilian* would forsake the tye they had made with *Henry* the eighth.

The Vice-Roy of *Naples* is instantly recalled from *Bressa*; a truce with *Spain* and *France* concluded; *Quintean* sent to the Emperor to join in it; *Don John de Manuel*, and *Diego de Castro* imployed to work the Emperor, and *Charles* the 1514.
Grandchild to exchange the marriage of

Mary, *Henry* the eighths Sister, with *Rene* the second Daughter of the *French* King: and *Lewis* himself to take *Elanor* their Neece to Wife: and to clear all dispute about the conditions, a blanck is sent from *Spain* to the *French* King to over-write what he please.

Henry the eighth perceiving this close and foul play, entertaineth an overture made by the Duke *de Longevil*, then Prisoner in *England*, for a Marriage of *Mary* his Sister with the *French* King; which effected, the two subtile Princes failed of their ends.

1515. *Lewis* dead, and *Francis* succeeding, he made his first entrance a league with *England*, the recovery of *Milain*, which he did, the protection of his Neighbours, the reduction of the *Swisses* from the Imperial side, for which he imployed to them the Bastard of *Savoy*.

Maximilian and *Ferdinand* seeing by this all their new purchases in danger, and that they had now no disguised Marriage again to entertain the credulity of *Henry* the eighth, they work upon his youth and hononr. The Emperor will needs to him resign his Emperial Crown, as wearied with the weight of Government and distraction of *Europe*, which needed a more active man than his old age to defend the Liberty of Subjects, and Majesty of Princes from the Tyranny of *France*.

That

That he had made the way already for him with the Electors; that he would send the Cardinal *Sedunensis*, with ample Commission into *England* to conclude the resignation, which was done. That at *Aquisgrane* he will meet *Henry* the eighth, and there give up his first Crown; from thence accompany him to *Rome*, where he should receive the last right of the Imperial dignity, putting *Verona* into his protection, then assailed by the *Venetians*, and giving him the investiture of *Millaine* in *feodo, more Imperiali*, then in possession of the *French*, to tye his aid the faster against these States.

Hereupon *Henry* the eighth concluded a defensive league with the Bishop of *Mesa* and Count *Daciana*, authorised Commissioners from the Emperor, *Arragon*, *Castile*, and sendeth his Secretary Master *Pace* with money, for *Maximilian* had already borrowed and broken to entertain the *Swissers* into pay and confederacy against *France*. 1516.

Charles the Grandchild must feign a difficulty to sway his League, until the Emperor, at *Henry* the eighth's cost, was fetched from *Germany* to the *Netherlands* to work his Nephew to it, who in the interim had closely contracted a peace by the Grandfathers consent with *France*. No sooner had *Maximilian* received ten thousand *Florins* of the *English* King to bear his charge, but the

Treaty of *Noyon*, was closely between him; *Arragon* and *Castile* concluded, whereby the ten thousand Crowns for recognition of *Naples* was passed from *France* to the Emperor; and *Charles* himself affianced to *Loysia* the *French* Kings Daughter, and also darkly carried, that when Master *Pace* at *Agno* came down from the Emperor with his Signature of the confederacy, the *French* Kings Ambassador went up the back Stairs with six thousand *Florins*, and the transaction of the Pension of *Naples* to *Maximilian*, and there received his confirmation of the Treaty at *Noyon*; notwithstanding the same day the Emperor looking upon his George and Garter, wished to *Wingfield*, *Henry* the eighths Ambassador, that the thoughts of his heart were transparent to his Master.

So displeasing was this foul play to the Cardinal *Sedunensis*, the Emperors chief Counsellor, that he writ *contra perfidiam Principum*, against the falshood of his own Lord, a bitter Letter to the *English* King; who finding again how his youth and facility was overwrought by these two old and subtil Princes, his vast expences lost, his hopes of *France* lessned, and that of the Empire vanished (for
1518 *Maximilian* is now conferring the Title of *Rex Romanorum* on one of his Nephews) concludeth, by mediation of the Admiral of *France*, a peace with that King;

King; a Marriage for the *Dolphin Francis* with the Lady *Mary*, and the re-delivery of *Tournay*, for a large Sum of money.

Not long after *Maximilian* dieth, leaving the Imperial Crown in Competition of *France* and *Castile*. *Charls*, whose desire was, as his Ancestors, to weave that wreath for ever into the *Austrian* Family, began to fear the power of his corrival, with whom the Pope then sided, and the *English* King stood assured by the late Marriage of their two Children. To draw off the Pope he knew it was impossible, he was all *French*. To work in *Henry* the eighth, he found the inconstancy of his predecessors, and the new match to lie in the way. To clear the one, he is fain in his Letters into *England*, to load his two Grandfathers with all the former aspersions, his years and duty, then tying him more to obedience than truth: but that he was a man, and himself now; that mutual danger would give assurance, where otherwise single faith might be mistrusted; *France* was in it self, by addition of *Britany*, more potent than ever, this man had rejoyned to it some important pieces in *Italy*, and should his greatness grow larger up by accession of the Imperial Crown, how easie were it to effect indeed what he had fashioned in Fancy, the Monarchy of *Europe*. As for the young Lady, who was like to lose her 1519.

Husband, if *Henry* the eighth incline to this Counsel, and assist *Castile* in pursute of the Emperor; he was contented (for *Loisia* of *France*, espoused to him by the Treaty at *Noyon*, was now dead) to make up the loss of the Lady *Mary* by his own Marriage with her; a match fitter in years, for the *Dolphin* was an Infant, as great in dignity; for he was a King, and might by the assistance of her Father be greater in being Emperor.

1519. Thus was *Henry* the eighth by fears and hopes turned about again, and *Pace* forthwith sent to the Electors with instructions and money, who so wrought, that *Charls* was in *July* chosen Emperor: and that it was by the sole work of *Henry* the eighth, himself by Letters under his hand acknowledged. From *Aquisgrane*, he cometh Crowned the next year for *England*, Weddeth at *Windsor* the Lady *Mary*; concludeth by league the invasion of *France*, and to divide it with *Henry* the eighth by the River of *Rodon*, making oath at the high Altar at *Pauls* for performance of both those Treaties.

1522. Hereupon *France* is entred by the *English* Army, and *Burbon* wrought from his Allegiance by a disguised promise of this Emperor of *Elianor* his Sister for Wife, to raise forces against his Master, which he did, but was paid by the *English* King.

The

The *French* King to carry the Wars from his own doors, maketh towards *Milan*; whereby *Burbon* and his forces were drawn out of *Province* to guard the Imperials in *Italy*. 1524. 1525.

At *Pavie* they met, and the *French* King was taken Prisoner, and forthwith transported into *Spain*, where at *Madrid* the Emperor forced his consent to that Treaty, whereby he gained *Burgundy*, and many portions in the *Netherlands*; leaving *Henry* the eighth who had born the greatest charge of all that Warre, not only there unsaved, but calling a Parliament at *Toledo*, taketh by assignment of his States, *Isabella* of *Portugal* to Wife, procuring from Pope *Clement* a Bull to absolve him of his former Oaths and Marriage, working not long after by *Ferdinandus* his Chaplain, the Earl of *Desmond* to Rebel in *Ireland*, and *James* the fifth of *Scotland*, by promise of Marriage with his Neece, the Daughter of *Denmark*; to whom he likewise sent Munition and Money, to busie *Henry* the eighth at home, that he might be the less able to requite these indignities he had so done him. And to shew that his ambition was more than his piety, he ordered by instructions, first the Duke of *Burbon*, and after *Hugo de Monsado* to surprise *Rome* and the Pope; sending *Angelo* an observant Frier thither, whom he had assigned to 1526.

the Papal Throne, intending to reduce the choice of the See from the Cardinals again, to the Empire, and there to set up a first Monarchy.

But his design by a needful confederacy, as now of the Pope, *French* King, Princes of *Italy* and others, with *Henry* the eighth, who was made *Caput fœderis*, was to the safety of all Christian Princes, prevented happily, and he himself reforced at *Cambray*, in the year one thousand five hundred twenty and nine, to re-deliver the *French* King, and many pieces of that Crown he had wrested away by the Treaty of *Madrid*, and to sit down with moderate and fair conditions against his will.

1529.

His waking Ambition would not long let him rest, but again he plotteth to break the knot between the *French* and *English* Kings.

To work this, he assureth, by contract, his assistance in furtherance of *Henry* the eighths Title of *France*; and to make the greater belief, offereth a Marriage to the Lady *Mary*, so she might be declared again Legitimate.

Henry the eighth accordeth with him, and advanceth his Army into *France*, where he had no sooner recovered *Bullein*, but the Emperor catching advantage on the *French* Kings necessities, falleth off from his former faith and promise, making up a peace perpetual with

France,

France, whereby all claim from the Crown of *Arragon*, *Naples*, *Flanders*, *Arras*, *Gelders*, and other parts was releaſed, and mutual confederation for reſtitution of the Catholick Religion concluded betwixt them both. 14 *Septemb.* 1545.

Edward the ſixth ſucceeding his Father forbears all Treaties with *Spain*, but thoſe of intercourſe, perſiſting as formerly in union with the Princes of *Germany*, and his other Allies, preventing thoſe expences and dangers, which his Fathers belief and confidence of *Spain* had taſted of before.

His Siſter and Succeſſor *Mary*, entertaining that fatal Amity with the Emperor and his Son, by Marriage, embarked her Eſtate in a dangerous War, whereby the Realm was much impoveriſhed, and *Callice* loſt. 1558.

Her Siſter of happy memory ſucceeding made up that breach, by that three-fold Treaty at *Cambray*, 1558. Where King *Philip*, as bound in honour, ſtood bound for aid in Recovery of *Calice*; But his own ends by that Convocation ſerved, he left her after to work out her ſafety her ſelf alone; yet fearing that a Union of *France* and your Realms, in the perſon of your moſt vertuous Mother, then married into *France*, he under a feigned pretence of Marriage, wrought by *Caraffa* and his Facti-

on

on of other Cardinals, a stay of the Popes Declaration against the Queen of *England*, more his own fears, than his love procuring it.

Yet the Princely disposition of this Noble Lady, taking those pretences for real favours, was not wanting both with her Counsel and Purse; for she imployed many of her ablest Ministers to mediate, and disbursed upon the assurance of *Brabant*, and the good Towns of *Flanders*
1578. whose bonds are yet extant, for reduction of those Provinces to his obedience,
150000 *li.* one hundred and fifty thousand pounds.

But when she found his aim to be the violating of their antient liberties, and in it saw her own danger involved; her Council advised her, not to leave the assistance of those people, *France*, and those other Princes that lay as her self in danger, to be swallowed up in his ambitious ends, who when he intended the Conquest of her Estate, to blind her
1587. with security, presented by *Carolo Lanfranco*, and the Prince of *Parma*, a Proposition of Peace; graced with as many Arguments of honest meaning, as his Progenitors had used to her Father, which she accepted, but not without a prudent suspition. For when the Treaty was in height, he brought his invincible Navy to invade the Realm, the success whereof was answerable to his Faith and Honor. She left not that injury without Revenge

venge, but forced him in his after Reign, to that extremity, that he was driven to break all faith with those Princes that trusted him; and paid for one years Interest, about twenty five thousand Millions of Crowns. 1597. 25000 *Mill. of Crowns.*

So low and desperate in Fortunes your Highness found him, when to all our comforts you took this Crown; Then from the abundant goodness of your peaceable Nature, you were pleased to begin your happy Raign with general quiet, and with *Spain* the first, which should have wrought in noble Naturas a more grateful Recompence than after followed: For long it was not before *Tyrone* was heartned to rebel against your Highness, and flying, had pension at *Rome*, paid him from the *Spanish* Agent. His Son *Odonel Tirconel*, and others your chiefest Rebels, retained ever since in Grace and Pay with the Arch-dutchess, at *Spains* devotion. King *James.* 1603. 1603. 1606. 1612.

As soon as your eldest Son of holy memory now with God, was fit for marriage, they began these old disguises, by which, before they had thriven so well, *&c.*

Twenty

Twenty-Four

ARGUMENTS,

Whether it be more expedient to ſuppreſs

POPISH PRACTICES

Againſt the due

ALLEGEANCE

OF HIS

MAJESTY.

By the Strict Executions, touching *Jeſuites* and *Seminary* Prieſts.

OR,

To reſtrain them to Cloſe Priſons, during life, if no Reformation follow.

Written by Sir *Robert Cotten*, Knight and Baronet.

LONDON,

Printed in the Year, 1679.

Twenty-Four

ARGUMENTS,

Which are more explicit to Popish

POPISH PRACTICES

against the due

ALLEGIANCE

OF HIS

MAJESTY,

By the Said Executions, including

Jesuits and Seminaries

OR,

To return them to Chief Justice,

during His Majesty's Reign.

Written by Sir Robert Cotton, Knight

and Baronet.

LONDON:

Twenty four ARGUMENTS Whether it be more expedient to suppress Popish Practices Against the due ALLEGIANCE TO HIS MAJESTY. By the Strict Execution touching *Jesuits*, and *Seminary* Priests, *&c.*

I Am not ignorant, that this latter Age hath brought forth a swarm of busie heads, which measure the great Mysteries of State, by the rule of their self-conceited wisdoms; but if they would consider, that the Commonwealth, governed by grave Counsellors, is like unto a Ship directed by

by a skilful Pilot, whom the necessities of occasions, and grounds of reason, why he steereth to this, or that point of the Compass, are better known, than to those that stand aloof off; they would perhaps be more sparing, if not more wary in their resolutions. For my own particular I must confess, that I am naturally too much inclined to his opinion, who once said, *Qui bene latuit, bene vixit*, and freshly calling to mind the saying of *Functius* to his Friend, at the hour of his untimely death, *Disce meo exemplo mandato munere fungi: Et fuge seu pestem*——

I could easily forbear to make my hand-writing the Record of my opinion, which nevertheless I protest to maintain rather deliberatively, than by the way of a conclusive assertion; therefore without wasting precious time any longer with needless Prologues, I will briefly set down the question in the terms following, *viz.*

Whether it be more expedient to suppress Popish Practices, against the due Allegiance to his Majesty, by the strict Execution touching Jesuites and Seminary Priests: Or to restrain them to close Prisons, during life, if no Reformation follow.

In

In favour of the first Division.

I.

THere are not few, who grounding themselves on an antient Proverb, *A dead man bites not*, affirm, that such are dangerous to be preserved alive, who being guilty, condemned, and full of fear, are likely for purchase of Life and Liberty, to inlarge their uttermost in desperate adventures, against their King and Country.

Mercy sorerunning the rapine of a malefactor, is an ill Guardian of a Princes Person.

II.

No less is it to be feared, that while the sword of Justice is remiss, in cutting off heinous offendors against the Dignity of the Crown, the mis-led Papal multitude, in the interim, may enter into a jealous suspence, Whether that forbearance proceed from fear of exasperating their desperate humours, or that it is now become questionable, Whether the execution of their Priests, be simply for matter of State, or pretended quarrel for Religion.

A hard hand, suddenly remitted, is seldom by the rude people interpreted in the best sense.

III.

And whereas in a remediless inconvenience, it is lawful to use the extremity of Laws against some few, that many by the terror of the example, may be reformed; what hope can there be that Clemency may tame their hearts, who

There is no hope of Reformation where there is no Confession of the fault.

interpret His Majesties Grace in transporting their Priests out of His Realm, to be a meer shift to rid the Prisons of those whom Conscience could not condemn of any capital crime.

IV.

While Justice sleeps, the time serves to sow news, and raise Factions.

Neither are their vaunting whisperings to be neglected, by which they seek to confirm the fearful souls of their party, and to inveigle the ignorant, doubtful or discontented Persons: for if the glorious extolling of their powerful friends, and the expectance of a golden day, be suffered to win credit with the meaner sort, the relapse cannot be small, or the means easie to reform the error, without a general combustion of the State.

V.

Fearful spirits, by sufferance, grow insolent and cruel.

Let experience speak somewhat in this behalf, which hath evidently descryed, with the Current of few years, that the forbearance of severity, hath multiplied their Roll in such manner, that it remains as a Corrosive to thousands of his Majesties well-affected Subjects.

VI.

Union in a prepared conspiracy prevails more than number.

To what purpose serves it to muster the names of the Protestants, or to vaunt them to be ten for one of the *Roman* Faction? as if bare figures of numeration could prevail against an united party, resolved, and advised before hand, how to turn their faces with assurance, unto all

all dangers, while in the mean time, the Protestants nestling in vain security, suffer the weed to grow up that threatneth their bane and mercileſs ruin.

VII.

Some time the Oath of Supremacy choaked their presumptuous imaginations; and yet could not that infernal smoke be smothered, nor the Locusts issuing thereout be wholly cleansed from the face of this Land. Now that the temporal power of the King, contained in the Oath of Allegiance, is by the Papal See, and many of the Adorers thereof, impudently avowed to be unlawful; shall the broachers of such Doctrins be suffered to live, yea and to live and be relieved of us, for whose destruction they groan daily?

It is hard to perswade those who by reason of their dependency on the Pope, are scarce masters of their own Souls.

VIII.

To be a right Popish Priest, in true *English* sense, is to bear the Character of a disloyal *Renegado* of his natural obedience to his Soveraign, whom if by connivency he shall let slip, or chastise with a light hand, what immunity may not traiterous Delinquents in lesser degrees expect, or challenge, after a sort, in equity and justice?

Malis benefacere tantundem est ac bonis malefacere.

IX.

If there were no Receivers, there would be no Thieves: Likewise if there were no harbourers of the Jesuits, it is to be presumed, that they would not

Fellowship in misery easeth grief, and by the clamor of a multitude, Justice is many times condemned.

troubl this Isle with their presence, therefore rigor must be extended against the Receiver, that the Jesuits may be kept out of doors; were it then indifferent justice, to hang up the Accessary, and let the Principal go free, namely to suffer the Priest to draw his breath at length, whiles the Entertainer of him under his Roof submits his body to the Executioners hands? without doubt if it be fit to forbear the chief, it will be necessary to receive the second offender into protection, wherewith a mischief must ensue of continual expence, and scandalous restraint of so great a number.

X.

Reputation is one of the principal Arteries of the Common-wealth, which *Maxim* is so well known to the Secretaries of the Papacy, that by private Forgeries, and publick impressions of Calumniations, they endeavour to wound us in that vital part; howsoever therefore some few of that stamp, being better tempered than their fellows in defence of this present Government, have not spared to affirm that *Tyránny* is unjustly ascribed thereunto, for so much as freedom of Conscience after a sort may be redeemed for money, notwithstanding there want not many Pamphleters of their side, who opprobriously cast in our teeths, the converting of the penalty inflicted on Recusants, and refusers of the Oath

It is not good to set price on that which being sold will bring repentance to the seller.

Oath of Allegiance, from the Kings *Exchequer*, to a particular Purse, sure we cannot presume, that those Libellers may be dissuaded from spitting out their venom maliciously against us, when they shall see their Priests mewed up without further process of Law, for either they will attribute this calm dealing to the justice of their cause, the strength of their party, or patience; or that tract of time hath discovered our Laws, importing overmuch sharpness in good policy to be thought fitter for abrogation, by *Non-usance*, than repealed by a publick decree.

Wariness is to be used with those, Qui nec totam servitutem pati possunt, nec totam Libertatem.

XI.

Moreover it is fore-thought, by some, that if these Seminaries be only restrained, they may prove hereafter like a Snake kept in the bosom, such as *Bonner*, *Gardiner*, and others of the same Livery shewed themselves to be, after Liberty obtained in Queen *Maries* time, and if the loss of those Ghostly Fathers aggrieve them, it is probable, that they will take Arms sooner, and with more courage, to free the living, than to set up a Trophy to the dead.

Most men write good Turns in Sand, and the bad in Marble.

XII.

Howsoever, the Jesuits band is known in their native soyl, to be defective in many respects, which makes them underlings to the Protestants, as in Authority, Arms, and the protection of the

Fugitives that crave succour use to lie much in favour of their cause and power.

Laws, which is all in all; Nevertheless they insinuate themselves to foreign Princes, favouring their party, with promises of strong assistance at home, if they may be well backed from abroad; To which purpose they have divided the inhabitants of this Realm into four Sects, whereof ranking their troops in the first place (as due to the pretended Catholicks) they assumed a full fourth part to their property, and of that part again they made a subdivision into two portions, namely, of those that openly renounced the established Church of *England*, and others, whose certain number could not be assigned, because they frequented our service, our Sacraments, reserving their hearts to the Lord God the Pope: The second party they allot to the Protestants, who retain yet (as they say) some reliques of the Church: The third rank and largest was left unto the Puritans, whom they hate deadly, in respect they will hold no indifferent quarter with Papistry: The fourth and last maniple they assign to the Politicians *huomoni* (say they) *senza dio, & senza anima*, men without fear of God, or regard of their Souls, who busying themselves only in matter of State, retain no sense of Religion. Without doubt, if the Authors of this partition have cast their account aright, we must confess that the latter brood is to be ascribed properly unto them;

Relation de Botero.

It is a sign when a Faction dares number their side, that there is an opinion conceived of sufficient strength, to attempt some Innovation.

In a Commonwealth there ought to be one head, for which cause a Prince must be vigilant, when divers Factions arise, that by favouring one, and neglecting the other, instead of a head of all he become only a member of one Party.

Discontented minds in beginning of Tumults will agree, though their ends be divers.

them; for if the undermining of the Parliament-House, the scandalizing of the King in print, who is Gods anointed, and the refusal of natural obedience, be marks of those, that neither stand in awe of God or conscience, well may the Papists boast, that they are assured of the first number, and may presume likewise of the last friendship, when occasion shall be offered; for the preventing of which combination, it is a sure way to cut off the heads that should tie the knot, or at least to brand them with a mark in the forehead before they be dismissed, or (after the opinion of others) to make them unwelcom to the feminine sex, which now with great fervency imbraceth them.

A multitude is never united in gross, but in some few heads which being taken away, converteth their fury against the first movers of the Sedition.

Certain Germans *in* Henry *the seconds time calling themselves* Publicans, *were marked with a hot Iron in the foreheads and whipped, being thrust out in the winter, with a Prohibition that none should receive them into their houses; they died of hunger and cold.*

These are for the most part Arguments vented in ordinary Discourse, by many who suppose a Priests breath to be contagious in our English *Air.*

Others there are, who maintain the second part of the Question with reasons not unworthy of observance.

In favour of the second Division.

I.

Rooted suspition, being violently handled, groweth more wary, but not less obstinate.

DEath is the end of temporal woes; but it may in no wise be accounted the Grave of memory; therefore howsoever it is in the power of Justice to suppress the Person of a man, the opinion for which he suffered (conceived truly, or untruly in the hearts of a multitude) is not subject to the edg of any sword, how sharp or keen soever. I confess that the teeth are soon blunted that bite only out of the malice of a singular Faction, but where Poyson is diffused through the Veins of a Common-wealth, with intermixture of blood good and bad; separation is to be made rather by patient evacuation, than by present incision; the greatest biter of a State is Envy, joyned with the thirst of Revenge, which seldom declares it self in plain colours, until a jealousie conceived of personal dangers, breaketh out into desperate resolutions; hence comes it to pass, that when one male-contented member is grieved, the rest of the body

If conspirators have one sympathy of mind, the conspiracy is never wholly suppressed, so long as one of them remaineth.

is

is sensible thereof, neither can a Priest or Jesuite be cut off, without a general murmur of their Seminaries, which being confident in their number, secretly Arm for opposition, or confirmed with their Martyrs Blood (as they are perswaded) resolve by patience and sufferance to glorifie their cause, and merit Heaven. Do we not daily see, that it is easier to confront a private enemy, than a Society or Corporation; and that the hatred of a State is more immortal than the Spleen of a Monarchy, therefore except it be demonstrated, that the whole *Roman* City, which consists not of one brood, may be cut off at the first stroke as one entire head, I see no cause to think our State secured, by sitting on the skirts of some few Seminaries, leaving in the mean time a multitude of Snarlers abroad, who already shew their Teeth, and only wait opportunity to bite fiercely. I will not deny, that, what we fear, we commonly hate, provided always, that no merit hath interceded a reconciliation; for there is great difference between hatred conceived against him that will take away the life, and him that may justly do it, and yet in clemency forbears to put it in effect; for the latter breedeth reverend awe, whereas the former subjecteth to servile fear, always accompanied with desire

Opinion settled in a multitude, is like Hydraes *heads, which must be cured with scarring and not by letting blood.*

Clemency is a Divine instinct, and worketh supernal effects.

desire of innovations, and although it hath been affirmed of the Church of *Rome*, *Quod Pontificium genus semper crudele*, nevertheless out of Charity let us hope, that all Devils are not so black as they are painted, some, or perhaps many of them there are, whom conscience, or in default thereof, pure shame of the world will constrain to confess that his Majesty most graciously distinguisheth the Theory of Popery; from the Active part thereof, as being naturally inclined, *Parvis peccatis veniam, magnis severitatem commodare, nec pœna semper, sed sæpius pœnitentia contentus esse.*

Gorticii Axiomata Politica.

Tacitus in vita Agricol.

II.

Mistaking of punishments Legally inflicted, commonly proceeds from fond pitty, or the interest which we have in the same cause; both which beget blind partiality; admit then, that the Papal side, affecting merit by compassion, may be neerly touched with the restraint of their Seminaries, it cannot be denyed, I hope, except they had the hearts of Tygers, that in humanity they will prefer their ease of durance, before the rigor of death; and albeit that *Parsons*, *Bellarmin*, and the Pope himself, constrain their spiritual Children, to thrust their fingers into the fire, by refusing the Oath of Allegiance, notwithstanding we have many testimonies in judicial Courts, and printed Books, that

When Traitors in evils will not choose the least, it is an argument that they are desperate, and breath nothing but extremity of mischief.

that the greater part of them are of that *Theban* hunters mind, who would rather have seen his Dogs cruel acts, then have felt them to his own cost.

Garnet himself also in one of his secret Letters, Lamented, that after his death he should not be inrolled amongst the Martyrs, because that no matter of Religion was objected against him; yet it plainly appeared in his demeanour, that he would gladly have survived the possibility of that glory, if any such hopes had remained. Neither is it to be presumed, that being in Prison, he would ever have conceived that we durst not touch his Reverence, or that the Law was remiss which had justly condemned him, and left his life to the Kings mercy. It was the distance of place, and not *Parsons* that interpreted the sending over seas of the Priests to be a greater argument of their innocency, than of his Majesties forbearance; For had Father *Parsons* himself been *Coram nobis*, his Song would rather have been of mercy than justice. It is truly said, that we are all instructed better by examples than precepts, therefore if the Laws Printed, and Indictments recorded, cannot controul the Calumniations of those that wilfully will mistake Treason for Religion: By the execution of two or three of that back-biting number, I doubt

It was a precept of Machivels, *to put on the mask of Religion.*

So it pleased Parsons *to civil, of whom it might be truly spoken*, Malus malum pejorem esse vult, & sui similem.

Gross and brutish errors are sooner reformed, than meaner escapes, for so much as the one cannot be defended without impudency, whereas the other admits some colour for excuse and pity.

doubt not but the question may readily be decided.

——*Namque immedicabile vulnus,*
Ense recidendum est, Ne pars sincera trahatur.

III.

To bestow benefits on the bad, maketh them worse, and vilifieth the reward of the vertuous.

To dally with pragmatical Papists, especially with those that by their example and Counsel pervert his Majesties Subjects, I hold it a point of meer injustice; For, what comfort may the good expect, when the bad are by connivency free to speak, and imboldened to put their disloyal thoughts into execution? For explaining therefore of my meaning, it is necessary to have a regard unto the nature of the Kings Liege-People, that are to be reformed by example of justice, and others, Forraigners, who will we, nill we, must be censurers of our actions: It hath been truly observed that the Nations of *Europe*, which are most remote from *Rome*, are more superstitiously inclined to the dreggs of that place, than the nearer Neighbours of *Italy*, whether that humour proceeds from the Complexion of the *Northern* Bodies, which is naturally more retentive of old Customs, than hotter Regions; or that the vices of the City, seated on seven Hills, are by

by crafty Ministers of that See, concealed from the vulgar sort, I list not now to discuss; but most certain it is, that the people of this Isle exceed the *Romans* in zeal of their profession; in so much, that in *Rome* it self, I have heard the *English* Fugitives taxed by the name of *Pichia pelli Inglesi*, Knock-brests, *id est*, Hypocrites; now as our Countrey-men take surer hold-fast of Papal traditions, than others; so are they naturally better fortified with a Courage to endure Death for the maintenance of that cause; for this Climate is of that temperature out of which *Vegetius* holdeth it fittest to chuse a valiant Souldier, where the Heart finding it self provided with plenty of blood to sustain sudden defects, is not so soon apprehensive of death or dangers, as where the store-house of blood being small, every hazard maketh pale cheeks and trembling hands: *Angli* (say Ancient writers) *bello intrepidi, nec mortis sensu deterrentur:* And thereunto *Botero* the *Italian* beareth witness in his Relations: Many Strangers therefore coming out of Forraign parts among the rarities of *England*, desire to see whether Report hath not been too lavish, in affirming that our condemned Persons yield their Bodies to Death with chearfulness, and were

Valour is often overcome by weakness, but being too much prized, it turneth to unbridled fury.

The best Laws are made out of those good Customs, whereunto the people is naturally inclined.

were it not that by daily experience we can call our selves to witness of that truth, I could produce the Reverend Judge *Forteſcue*, who in commendation of our *Engliſh* Laws, made ſuitable (as he well obſerveth) to the inbred Conditions of the inhabitants of this ſoil, avoweth, that the *Engliſh* people in tryal for Criminal cauſes, are not compelled by tortures to confeſs as in other Nations it is uſed, for as much as the quality of the *Engliſh* is known to be leſs fearful of death than of torments: for which cauſe, if the torments of the Civil Law were offered to an innocent perſon in *England*, he would rather yield himſelf guilty, and ſuffer death, than endure the horror of lingring pans. *Inſulani plerunque Fures* (ſaith one) and ſo true it is, that this Countrey is ſtained with that imputation, notwithſtanding that many are put to death, to the end that others by their fall, might learn in time to beware: If then it do appear that terrour prevails not, to keep men from offences which are condemned by Law and Conſcience, what aſſurance can there be to ſcare thoſe who are conſtantly ſatisfied in

Uſe to ſee men die with reſolution, taketh away the fear of death, for which purpoſe the Romans uſed the fights of their Gladiators.

The Hereticks called Publicans *when they were whipped they took their puniſhment gladly, their Captain* Gerrard *going before them and ſinging, Bleſſed are you when men do hate you.* Andromachen. Si vis vitam minitare. Sen. Trag.

their

their minds, that their sufferings are either expresly, or by implication for matter of Religion and health of their Souls; in such case to threaten death to English-men, *Quibus nihil interest humi ne sublimi ne putrescant*, is a matter of small consequence, *Purpuratis Gallis, Italis, aut Hispanis, ista minitare*, to a setled resolution it boots not to shew the dreadful visor of death; Menaces to prolong a wearisome life, prevail much more in such cases. Rightly did *Clement* the eighth consider, that by burning two *English*-men in *Rome* for supposed Heresie, he rather impaired his Cause than better'd it; insomuch, that many present at the resolute death of Mr. *Marsh*, who was brought to dust in *Campo di Sancta Fiore*, spared not to proclaim himself a Martyr, carried away of his ashes for a Relique, and wished their souls in the same place with his; which news brought to the Popes ear, caused him (as it was bruited about *Rome*) solemnly to protest that none of the *English* Nation should publiquely from that time be consumed with fire. On the other side if we read the Volumes written in praise of their Priests Constancy, the *Martyrology* or *Calendar* of *Martyrs*, and path way of Salvation as it were, chalked out unto the Papists, by sacrifizing

Worldly desirs may be quenched with godly meditations, our Heavenly hopes cannot be abated by earthly punishments.

It is a point of wisdom to maintain the truth with as little disputation as may be, lest a good cause be marred with ill handling.

crifizing their lives for the Pope, we shall find that by taking away of one, we have confirmed and united many, whereof I could give particular instance, if I thought any scruple were made in that point. As for forraign parts which hold with the Papal Supremacy, it is clear that they will be severe and partial judges in this cause; for albeit that here in *England*, it is well known to all true and loyal Subjects, that for matter of *Roman* doctrine, no mans life is directly called into question? but that their disobedience in reason of State is the motive of their persecution; Neverthelesse where a great Canker of Christendom is rooted in a contrary opinion, and things in this world are for the most part esteemed by outward appearance, this Land cannot escape malicious scandals, neither shall there be want of Colledges to supply their Faction with Seminaries: Therefore again and again, I say, that if the state of the question were so set, that it were possible by a general execution of the Priests, and their adherents, to end the controversie, I could in some sort with better will, subscribe thereunto: But seeing I find little hope in that course, I hold it safer to be ambitious of the Victory, which is purchased with less loss of blood; and to proceed as *Tully* teacheth

Truth seldom prevaileth with the partiality of the people, which being ignorant, is carried away with the outward semblance of things.

It is hard to make a rule so general, against which difference of Circumstance may not except.

teacheth his Orator, who when he cannot wholly overthrow his Adversary, yet ought he to do it in some part, and withal endeavour to confirm his own party in the best manner that may be.

IV.

He that forbeareth to sow his ground in expectance of a good Wind or favourable Moon, commonly hath a poor crop and purse; so shall it fare with this State; if private whisperings of discontented persons, that never learnt to speak well, be too nicely regarded, yet ought they not to be sleightly set at nought, lest our credit grow light, even in the balance of our dearest friends. The Papistical Libellers inform against us, as if we were desirous to grow fat with sucking of their blood, the very walls of their Seminary Colledg at *Rome* are bedawbed with their lying Phansies, and in every corner the Corner-creepers leave some badg of their malicious spleen against us, crying out of Cruelty and Persecution; but if the penalty of death be changed into a simple endurance of prison, what moat in our eyes can they find to pull out? or with what Rhetorick can they defend their obstinate malapertness, which with repaying us ill for good, deserve to have coals of indignation poured upon their heads? *Visne muliebre Consilium?*

He that is calumniated by many, is in danger, first to be suspected by his friends, and shortly to be condemned if the slander continue.

That Counsel takes best effect that is fitted to the nature of times and persons.

said *Livia* to *Augustus*; Let severity sleep a while, and try what alteration on the pardoning of *Cinna* may procure; The Emperor hearkened to her Counsel, and thereby found his Enemies mouths stopped, and the fury of their malice abated. Some there are perchance that will term this Clemency Innovation, and vouch the Precedent of that City, which permitteth none to propound new Laws, that had not a cord about their necks ready for vengeance, if it were found unprofitable; but let such Stoicks know, that there is great difference between the penning of a Law, and advice giving for the manner of executing it; neither (by their leaves) are all innovations to be rejected, for divine *Plato* teacheth us, that in all Common-wealths upon just grounds, there ought to be some changes, and that States-men therein must behave themselves like skilful musicians, *Qui artem musices non mutant, sed musices modum.*

Those Changes of States are safely made, which reserving most of the Ancient form, betters it and reduces the defects into order.

V.

That an evil weed groweth fast, by the example of the new Catholick increase, is clearly convinced; but he that will ascribe this Generation simply to his Majesties heroical vertue of *Clemency*, argueth out of fallacy, which is called *Ignoratio Elenchi*; was not the zeal of many cooled towards the last end of Queen

The Church is most zealous, when Persecution is fresh in memory; when those times are forgotten, we grow to loath that which we enjoy freely.

Queen *Elizabeths* Reign? hath not the impertinent heat of some of our own side bereft us of part of our strength, and the Papacy with tract of time gotten a hard skin on their Consciences?

Parva metus primo, mox sese attollit in altum?

But if we will with a better insight behold how this great quantity of spaun is multiplied, we must especially ascribe the cause thereof to their Priests, who by their deaths prepare and assure more to their sect, than by their lives they could ever perswade; it were incivility to distrust a Friend, or one that hath the shew of an honest man, if he will frankly give his word, or confirm it with an Oath, but when a Protestation is made upon the last gasp of life, it is of great effect to those that cannot gainsay it upon their own knowledg.

The number of Priests which now adays come to make a Tragical conclusion is not great; yet as with one Seal many Patents are sealed; so, with the loss of few lives, numbers of wavering spirits may be gained, *Sanguis Martyrum, Semen Ecclesiæ*: And though those Priests having a disadvantagious cause, are in very deed but counterfeit shadows of Martyrs unto a true understanding, yet will they be repu-

In this case the question is not so much of the truth of it, as who shall be Judg, and what Censure will be given.

ted for ſuch, by thoſe that lay their Souls in pawn unto their Doctrine, with whom if we liſt to contend by multitude of voices, we ſhall be cried down without all peradventure, for the gate of their Church is wide, and many there are that enter thereinto.

VI.

By divers means it is poſſible to come to one and the ſelf ſame end; ſeeing then that the ſum of our well-wiſhing is all one, namely that Popiſh Prieſts may have no power to do harm, it is not impertinent to try ſundry paths, which may lead us to the perfecting of our deſires. Politicians diſtinguiſh *inter rempublicam conſtitutam & rempublicam conſtituendam*, according to the ſeveral natures whereof Statiſts are to diſpoſe of their Counſels and Ordinances; were now the Rhemiſts and Romuliſts new hatched out of the ſhell, the former courſe of ſeverity might ſoon bury their opinions with their perſons, but ſince the diſeaſe is inveterate, variety of medicines is judicially to be applied. The *Romans* did not puniſh all crimes of one and the ſelf-ſame nature with extremity of death; for ſome they condemned to perpetual Priſon; and others they baniſhed into an Iſland or ſome remote Countrey; even in the caſe of Religion they were very tender to dip their fingers in blood;

In the firſt 11 years of Queen Eliz. *it was eaſier to ſubdue Popery than now, for then they feared to irritate the State, not knowing how far ſeverity might extend, now knowing the worſt they are reſolved* Agere & pati fortia.

blood; for when *Cato* was Consul, (and it seemed good unto the Senate to suppress with violence the disordered Ceremony of the *Bacchanals*, brought by a strange Priest into the City) he withstood that sentence, alledging that there was nothing so apt to deceive men as Religion, which always pretends a shew of divinity: and for that cause, it behoved to be very wary in chastising the professors thereof, lest any indignation should enter into the peoples minds, that somewhat was derogated from the Majesty of God. Others (more freely) have not spared to place Religion, (I mean that Religion which is ignorantly zealous) amongst the kinds of Frenzie, which is not to be cured otherwise than by time given to divert, or qualifie the fury of the conceit,

Vulgus est morosum animal, quod facilius duci, quam cogi potest.

Tantum Religio potuit suadere malorum.

VII.

Howsoever in valuing the power of a City or strength of Arguments, quality and worth is to be preferred before number; nevertheless where the uttermost of our force is not known, it imports much to have it conceived; That the multitude stands for us, for doubts and suspicions cast in an enemies way evermore makes things seem greater, and more difficult than they are indeed; we have by Gods mer-

Many Partizans encourage the faint-hearted, and when an enemy cannot prevail against numbers, his thoughts are not how to offend, but how to make a safe retreat.

cy the Sword of justice drawn in our behalf, which upon short warning is able to disunite the secret underminers of our quiet; we have a King zealous for the house of the Lord, who needeth not to fear less success in shutting up of Priests, than our late Queen had, in restraining them in *Wisbich*, Castle, where left their Factious Spirits should grow rusty, they converted their Cancer to fret upon themselves, and vomitting out Gall in *Quod-libets*, shewed that their disease was chiefly predominant in the spleen; what tempests they have raised in their Colledg at *Rome*, their own books, and many travellers can witness; the storm whereof was such, that *Sixtus Quintus* complained seriously of the vexation which he received oftner from the *English* Scholars, than all the Vassals of the Triple Crown; and untruly is the Magistrate noted of negligence or overmuch security, that layeth wait to catch the Foxes, and the little Foxes which spoil the Vineyard, though afterwards without further punishment he reserve them to the day wherein God will take account of their Stewardship; for if *Aristotles* City, defined to be a Society of men assembled to live well, be the same which in our Law hath reference to the maintaining of the people in Peace, so long as we taste of the sweet

More Priests may be shut up in a year than they can make in many.

Desire of innovation is rash and contentious, and therefore can hardly agree of a head.

Peace is always to be wished provided that under the canker thereof, there be not a mischief, entertained worse than War it self.

sweet of a peaceable Government we cannot say but that we live well, and that the City consisting of men and not of walls is happily guided.

VIII.

An oath is of force, so long as it is thought lawful, when that opinion is crazed, it doth more hurt than good.

An Oath is a weak bond to contain him that will for pretended conscience sake hold no faith with Hereticks, or by absolution from a Priest thinketh himself at liberty to fly from any promise or protestation whatsoever; therefore when I remember that *Watson* the Priest, notwithstanding his invectives against the Jesuits, gained liberty to forge his traiterous inventions, and had others of his Society in the complot, I judg it safer to make recluses of them, than to suffer such to dally with us by books, and some idle intelligences cast abroad only as a mist to blear our eyes. But how shall we find the means to apprehend those disguised Romanists that borrow the shape of Captains, Merchants, Gentlemen, Citizens, and all sorts of people, and by equivocation may deny themselves to be themselves? In answer to this question, I will first shew the reason why they are not pursued and taken, and hereafter make an overture how they may be bolted out of their hutches; the nature of Man howsoever in hot blood, it be thirsty of revenge, in a cold temper it hath a kind of *Nausea* as I may call it, or a di-

One man in another beholdeth the Image of himself, and thereby groweth compassionate and sensible of that which may fall to himself.

staste of taking away the lives, even of the Nocent, insomuch that in all Assises and Sessions, an offender can hardly be condemned, whom the foolish pitty of man will not after a sort excuse, with laying some imputation on the Judg, part on the Jury, and much on the Accuser; and such is their blind affection, that the prisoner who perhaps was never recommended for handsomness, will be esteemed of them, for one of the properest men in the company; from hence it comes that the name of Serjeant, or Pursevant is odious, and the executioner, although he be the hand of justice, is esteemed no better than an enemy of mankind, and one that lost honesty and humanity in his Cradle; Reverend Master *Fox* was wont to say, that spies and accusers were necessary members in a Common-wealth, and deserved to be cherished, but for his own part he would not be any of that number, or wish his friends to affect such imployments; and albeit that the Law permits, and commands every man to apprehend a Felon, do we not see commonly very many content to stand by and look on while others perform that office? Likewise it is evident, that if such as are tender of their reputations, be very scrupulous personally to arrest men, for civil actions of debt, they will be more unwilling instruments of draw-

What men do unwillingly is never done effectually.

drawing their bodies to the Rack or the Gallows, especially when there is any colour of Religion to be pretended in their defence; the diversity of mens faces is great, but the difference of their minds in this case is more variable, wherein the meanest have thought as free as the highest; besides this, there are too many of the blind commonalty altogether Popish, though indeed they make honourable amends for their treason; verily I know not what misguiding of the mind it is, that maketh men forecast the possibility of alteration in matters of Religion, and for that respect they are exceeding backward in discovery, and laying hands on Seminaries, yea, and are timorous in enacting sharp Laws against them, as those that silently say amongst themselves.

When many tumultuous persons assault, there will be a fray.

Sors hodierna mihi, cras erit illa tibi.

Some also survive; who, remember that in Queen *Maries* time, the Protestants alledged a Text, that the tares should not be plucked up before harvest, nay, I shall speak a buggs word, there is no small number that stand doubtful whether it be a grateful work to cross Popery, or that it may be done safely without a foul aspersion of Puritanism, or a shrewd turn of their labours, at some time or other, by which unhappy ambiguity it comes to pass, that these *Animalia Amphibia* (the Priests I mean) that

Vertue neither praised nor rewarded waxeth cold.

that prey on the Souls and bodies of either sex, unattached, revel where they list, though they be more seen than a man dancing in a Net; how much fitter were it for us couragiously to invite them to our party, by preaching or confuting them by writing, and unto the State wherein we stand, wisely to apply the saying of the *Assyrian* King to his Souldiers, You are fools (quoth he) if there be any hope in your hearts to redress sorrow by flight, or rather indeavour to make them fly that are the causers of your grief, assuring your selves, that more perish in flight, than in the Battel, even as many seeking to meet the Papists half way discomfort our own party.

IX.

An ill name given to a good thing discouragethmen from medling with it.

It followeth now (according to the Method prescribed) that an overture be made to get the Jesuits and their shadows the Priests, into possession; it hath been heretofore recited, that the unwelcom names of a blood-sucker, a busie-body, or a Puritan, have been shrewd Scar-crows unto many honest minds; by abrogating therefore of those or such like Imputations many will be stirred up to undertake the apprehending of the adversaries unto the truth, especially when for their pains and time imployed, they shall deserve and have the title of good Patriots, dutiful Sub-

Subjects, and zealous Christians, how ready is every common person to carry a Malefactor to the Stocks, rather than unto the Gaol or Execution? and doubtless they will be no less forward to attach a Priest, when they are assured that the worst of his punishment shall be a simple restraint within the walls of an old Castle. A certain kind of people there is, with whom money plays a more forcible Orators part, than any perswasion of the dutiful service which they owe to the Commonwealth; these men will not be negligent to give intelligence, and also to procure it faithfully; provided that reward may help to line their threadbare purses, and exempt them from need to sell liberty unto Seminaries; and where assurance of gain is propounded for discovery, what Master or House-keeper will trust his Servant with keeping of his Priest, or sleep quietly while he is engaged to the danger of a Mercenary? I remember that in *Italy* it was often told me, That the bountiful hand of Sir *Francis Walsingham* made his Intelligences so active, that a Seminary could scarcely stir out of the gates of *Rome* without his privity, which success by mediation of gold, may as readily be obtained from *Syvil*, *Vallidolid*, *Doway*, *Lovaine*, *Paris*, and any other places, and by fore-

Wise men do forecast how to do most with least noise.

fore-warning given of their approach, they may be waited for at the Ports, and from thence soon conveyed to a safe lodging. But whence shall the stream flow that must feed this bounty? it is a doubt easily satisfied, if some thousands of pounds out of the Recusants penalties, be reserved in stock, and committed by his Majesty unto the disposition of zealous distributers, who will not be afraid to conclude *Perdat fiscus, ut capiat Christus*; neither need we seek any further succour to repair decayed Castles, and therein to defray the charge of the Priests, with a sure guard to keep them, than the aforesaid forfeitures that by the Justice of the Law may be collected; which course, if ever it come happily to be entertained, and that Recusancy cease to be an ignominious prey to the subject, the proceedings for Religion shall be less blamed, and perhaps altogether unjustly accused by any graceless *Gretzerus* or *Cacodæmon Johannes*, tincting their Pens in Gall and Vineger; for besides occasion of Calumniation given by sutes of that nature, it is evident that many Recusants that would be indicted for the King, and the effecting the project aforesaid, shall escape without punishment, and be born out against the power of a private person; begging to no

Particular officers must be appointed, what is to all is commonly performed by none.

no other purpose, than hath heretofore been used: and albeit the penalty be rated at 20 *l.* a moneth, yet was it never the Law-makers intent, that such as were not able to pay so great a summe, should go scot-free, but that according to the proportion of their ability, they should do the penance of their Purses; whereas now if the voice of the people (which is said to be the voice of God) is to be credited, the poorer sort is skipt over, as if they owed no souls to God, nor duty to their Soveraign. A poor Man (saith one) is to be pityed, if he offend through necessity, but if he do amiss voluntarily, he is more severely to be chastised; for so much as wanting Friends, and means to bear him out, it sheweth that this fault proceeds from presumption.

The service done for the Kings proper use, hath his Warrant and Countenance, but when a private man hath the gain, neither reward, nor bearing out can be expected; and by consequence Recusants are free.

X.

Let us now pre-suppose, that all the whole Regiment of *Jesuits* and *Seminaries* were lodged in safe custody, may we then perswade our selves that Popery will vanish like a dumb shew: I am clearly resolved, that though it receive a great eclipse, notwithstanding without other helps the Kingdom of *Antichrist* will onely be hidden, as a Weed that seems withered in the Winter, and is ready to sprout out with the Spring. Temporal arms are remedies

Medicines that work in the spirits of men, are of greater force, and cure more surely than outward plaisters.

medies serving for a time, but the Spiritual sword is permanent in operation, and by an invisible blow works more than mortal man can imagine. The Word of God carrieth this two-edged Weapon in his mouth, which is to be used by faithful Ministers of the Church, whom pure Zeal, without respect to worldly promotion, or person, ought to encourage: Of Judges the Scripture saith *Estote fortes*; and daily we see that sitting in their judicial seats, God inspireth them with greater courage, than when, as private persons, they are to give their opinions; no less is the power of the Holy Ghost in his Servants, that out of the Pulpit are to deliver his Ambassage; let them therefore not be dismaid to speak out plainly, and tell the truth, without running a middle course between heat and cold, unprofitable descanting upon the Scripture, with an old postil, or for want of better matter waste the poor time shut up in an hour-glass, with skirmishing against the worthy Pillars of our own profession: Rumor which is ever ready to take hold of evil, hath raised a secret, though (as I hope) a causless suspicion, that there should be some combination underhand, by changing the state of questions, to put us in our old days to learn a new Catechism; and when they have brought us

Speech is the interpreter of the minde, therefore who so useth in Divine matters to speak reservedly, and in a double sense, he will be suspected to have a double heart, and unfit to teach them that trust him not.

us out of conceipt with the Reverend Interpreters of the Word, to use us then as the Wolves (mentioned in *Demosthenes* Apology) handled the Shepheards when they had delivered up their Dogs. Most sacred was that Speech of our gracious King, concerning *Vorstius*, *He that will speak of* Canaan, *let him speak the language of* Canaan. How can we draw others to our Church, if we cannot agree, where, and how to lay our foundation? or how may we cleanse the Leprous disease of dissension, which the Papists which are least assured to themselves, and most doubtful of their Salvation, are not ashamed to ascribe unto many of us? I would not have Ministers indiscreet, like Dogs, to bark against all, whether they know or know them not; I like better the opinion of *Aristotle*, who adviseth those that stand in guard of a place, to be curst onely to such as are about to endammage the City: If Pursevants or other Civil Officers, would learn to keep this rule, they might go about their business with much credit. The imagined fear of inviting the *Romish* Faction by force to deliver their Ghostly Fathers out of Prison, moves me not a whit; for I cannot believe that they esteem them at so dear a price, as they would run the hazard, by freeing others out of hold, to put themselves

A good Pastor is the Physician of the Soul, and ought to apply his doctrine according to the tenderness or hardness of the Conscience, for want of which discretion, some mens zeal hath done hurt.

ſelves into their places. Some will ſay that a man of Straw is a head good enough for a diſcontented multitude: That the Papiſts are very cholerick, it appears ſufficiently by their writings, yet it hath pleaſed God to ſend thoſe curſt Cows ſhort horns; that when they ſhould not find a man of ſufficiency to ſerve their turn, they were fain to do homage to *Garnetts* ſtraw, forgetful as they are, that ſuch ſtubble cannot endure the tryal of fire: But unto us, that ought to be Doers, as well as Profeſſors of the Goſpel, let this remain as a memorable Theorem; *Religion is the Mother of good order; Good order is the cauſe of proſperous Fortune, and happy Succeſs in all Counſels and enterpriſes.* Therefore in what eſtate ſoever there wanteth good order, it is an evident Argument that Religion goes backward.

False miracles and lying news are the food of ſuperſtition, which by credulity delude ignorant people.

XI.

I have ever held it for a kind of Injuſtice to omit the execution of mean Laws, made to prevent the effects of Idleneſs, and then to apply main extremity of the Sword, when the proling habit gotten by that vice comes to light; no leſs is the courſe uncharitable (with pardon for this preſumption be it ſpoken) when we ſpare them that have no Religion at all, and cenſure thoſe that can give an accompt of ſome-

God which is the great Lawmaker, by his Laws prevents ſins, to the end puniſhments may be inflicted on it juſtly; as to avoid Idolatry, he forbiddeth making of Images: He that cannot live chaſt, let him marry, &c.

somewhat tending to that purpose. He that is in misery must be born withal if he speak miserably, and when the Child from his Mothers breast hath sucked nothing but Popery, a man had need to be angry with discretion if he hear him speak in the voice of a Papist. God calleth some by miracle, but the ordinary means is his Word: If that means in any place of this Land be wanting, of what Religion is it likeliest the people will be? I suppose that few men will gainsay my assertion; that outward sense will direct them to Popery, which is fuller of Pageants than of spiritual doctrine; and what is the cause that after so many years preaching of the Gospel, the common People still retain a scent of the *Roman* perfume? the Cause is for that the formal obedience of coming to Church hath been more expected than the instruction of private Families, publique Catechizing is of great use; but the first Elements thereof are to be learnt at home, and those things which we learn from our Parents, stick more surely in our minds; what was the cause why the *Spartans* continued their Government so many Revolutions of times, without mutation? Histories record, that learning their Countrey Customs from their Infancy, they could not be induced to alter them: And

A man is said to know so much as he remembreth, and no more; and we remember best, what we learn in our youth; therefore if we will be wise when we are old, we must be taught when we are young.

Out of Oeconomical Government, the diversity of States grow, and such as a Princes house, is the State of the Commons for the most part: by which reason a Prince may by the Survey of his House, have an aim how the Commonwealth is afflicted.

in this our native soile we perceive, that the Common Laws which rely on antient Customs, are better observed than late Statutes, of what worth soever they be: So doth it fare with the poor people, which being once seasoned with the old dreggs of Papism, will hardly be drawn from it, till the Learning of the true Faith be grown to a Custom. I will prescribe no order nor Officers to effect this; but I suppose that the antient laudable course, by the Bishops confirmation, will not be sufficient to fulfil so great a task, the Minister must and ought to be the Principal and immediate hand to give assistance to so gracious a work; and in case any be defective in their duty, the Reverend BISHOPS may take notice thereof in their several Visitations.

By the Laws there were Tything-men, who gave accompt for ten households: Some such Officers might be good in this case: for I hold the breaking of the Sabbath to be the ruine of our Religion.

Perhaps it will be thought a hard task to constrain old people to learn the *A. B. C.* of their Christian belief; but how hard soever it be, I hold it no incivility to prepare people of all Ages for the Kingdom of Heeven. By the order contained in the Book of Common Prayer, on Sundays and Holydays, half an hour before evensong, the Curate of every parish ought to examine Children sent unto him, in some points of the Catechism: and all Fathers,

thers, Mothers, Masters and Dames, should cause their Children, Servants, and Prentices, to resort unto the Church at the time appointed, there to hear and be obediently ordered, by the Curate, until such time as they have learnt all that in the said Book is commanded, and when the Bishops shall appoint the Children to be brought before them, for their Confirmation, the Curate of every Parish shall send or bring the names of those Children of his Parish which can answer to the questions of the Catechisme; and there ought none to be admitted to the Holy Communion, until such time as he can say his Catechism, and be confirmed. Many times I have stood amazed to behold the Magnificence of our Ancestors buildings, which their Successors at this day are not able to keep up; but when I cast mine eyes upon this excellent Foundation laid by the Fathers of the CHURCH, and perceive their Children neglect to build thereupon, with exceeding marvel, I rest almost besides my self, for never was there better ground-plot laid, which hath been seconded with less success: It was not the Bull of *Pius Quintus* on the Bishop of *Londons* Doors, or the forbearing to hang up Priests that have wrought this Apostacy, but the Idle-

It were fit also that they learnt how to distinguish the common grounds of Popery, whereby the Priests deceive poor people.

He that knows not the true cause of an evil, cannot help it but by change, which is a dangerous guide of a State.

ness and insufficiency of many teachers, conspiring with the peoples cold Zeal, that hath been the Contriver of this Webb. Until the eleventh year of Queen *Elizabeths* Reign, a Recusants name was scarcely known; the Reason was, because that the zeal begotten in the time of the *Mariam* Persecution was yet fresh in memory, and the late Persecutors were so amazed with the sudden alteration of Religion, that they could not chuse but say, *Digitus Dei est hic.* In those days there was an emulation between the Clergy and the Laity; and a strife arose whether of them should shew themselves most affectionate to the Gospel: Ministers haunted the Houses of worthiest men, where Jesuits now build their Tabernacles; and poor Countrey Churches were frequented with the best of the Shire; the Word of God was precious, Prayer and Preaching went hand in hand together, until Arch-Bishop *Grindals* disgrace, and *Hatfields* hard conceipt of Prophecying brought the flowing of those good graces to a still water; the name of a Papist smelt rank even in their own nostrils, and for pure shame to be accompted such, they resorted duely both to our Churches and Exercises; but when they saw their great *Coryphæus Sanders* had slily pinned the names of Puri-

where good men are afraid to call a Vice by the proper name, it is a sign that the vice is common, and that great persons (whom it is not safe to anger) are infected therewith.

De Schism. Anglicano & vis. Mon. Eccles.

Puritans upon the ſleeves of the Proteſtants that encountered them with moſt courage, and perceived that the Word was pleaſing to ſome of our own ſide, they took heart at graſs, to ſet little by the ſervice of God, and duty to their Soveraign.

Therewith ſtart up from amongſt us, ſome that might have been commended for their zeal, if it had been tempered with diſcretion, who forerunning the Authority of the Magiſtrate, took upon them in ſundry places, and publiquely to cenſure whatſoever agreed not with their private conceipts, with which groſs humours vented in Pulpits and Pamphlets, moſt men grew to be frozen in zeal, and in ſuch ſort benummed, that whoſoever (as the worthy Lord Keeper *Bacon* obſerved in thoſe days) pretended a little ſpark of earneſtneſs, he ſeemed no leſs than red fire hot, in compariſon of the other. And as ſome fare the worſe for an ill Neighbours ſake, dwelling beſide them, ſo did it betide the Proteſtants, who ſeeking to curb the Papiſts, or reprove an idle drone, were incontinently branded with the ignominious note of Preciſian, all which wind brought plenty of water to the Popes Mill, and there will moſt men grind where they ſee appearance to be well ſerved.

Some think that if theſe mens zeal had by order been put to imploy it ſelf otherways, and a task ſet them to do ſome good and memorable thing in the Church, they might have been reformed, or made harmleſs by diverſion.

Head-ſtrong Papiſts are not eaſily ſubdued, yet muſt they not be ſuffered to grow to a Faction, Diſcretio pro lege diſcernere quid ſit res, *muſt lay the burthen in the right place.*

XII.

Without Reformation in this point, Popery will still encrease; but as all vertuous enterprizes are difficult, so is this most intricate.

A wise Householder will cast up his reckonings to see what loss or profit he hath made in a year.

If without great inconveniency, the Children of the Papists could be brought up out of their Company, it were a happy turn, but I find it to be full of difficulty; there is provision made to avoid Popish School-Masters, but there is no word against Popish School-mistresses, that infect the silly Infants while they carry them in their arms; which moveth me to suppose that the former proposition to examine how Children and Servants are brought up, and truely to certifie the list of the Communicants and Recusants, will be the readiest means to let his Majesty know the yearly increase or decrease of the Church in every Diocess. And whosoever shall send his Children, or any of his Majesties Subjects to be placed in Monasteries or Seminary Colleges, or Popishly to be brought up in foraign parts, I think that for punishment, both one and the other worthily might be disfranchised of the priviledges due to English men, so far forth as any good by the Laws may descend to them, but not to be exempted from the Penalties thereof in the regal jurisdiction of the Crown. I know well that contradiction is odious, and makes a man seem ambitious to be thought more understanding than others, in which case the *Spaniard* useth only to term him presump-

Guevara Epist. Aureæ.

sumptuous, whom he would call Fool, if civility would bear it; but in my defence, I hope it shall suffice again to revive my former protestation, that I discourse by the way of Proposition, rather than arrogantly of defining any thing, with pardon therefore may I be permitted to say, that the first easie Law of twelve pence, inflicted on him that could not give a reasonable excuse for his absence from Church on Sundays, was one of the best Ordinances that hath hitherto been enacted; but while we sought to make new Statutes, savouring of more severity, we neglected the old, and were loth to execute the new; for it is a certain rule, that whosoever in policy will give liberty, and yet seem to suppress a Crime, let him procure sharp Laws to be proclaimed, which are necessary only for some times, and rare occasions, to be put in execution, but not to be an ordinary work for every day of the week; daily use likewise teacheth us, that it is less grievous to punish by an old Law than by a new, for so much as truth it self seldom gets credit without proof, and it is hard to free the people of suspicion, that new Laws are not rather invented against the particular persons and purses of men, than against their corrupt manners; by force of which reason I am induced to conceive,

The Law which took immediate notice of an offence, gave a quick redress, and corrected the poor as well as the rich.

Sharp Laws that stand upon a long process, after a manner seem to dispence with the vice.

The allegiance to God ought to precede the temporal obedience; for if the first may be obtained, the second will follow of it self.

ceive, that the old use of the Church contained in good nurture, and Ecclesiastical censures, will much more prevaile to muzzle Popery, than any fresh devices whatsoever; neither do I think it blame-worthy to affirm that our Cause hath taken harm by relying more on the temporal than the spiritual Arms; for while we trusted that capital punishments should strike the stroke, we have neglected the means which would for the most part have discharged the need of such severity; the Oath of Allegiance is not offered generally to Servants and mean people, who if they had taken the Oath, by absolution of a Priest might recoyl from it, or change their opinion at leasure, without any ready means to discover their Legerdemain, that Oath I fear will not be often pressed, and to them that shift from place to place, how can it be tendred? The principal Papists now cover themselves in the crowd of the multitude, but if we can discover the affection of the multitude, they will easily be unmasked, and being singled out, rest ashamed of their nakedness (which under correction of better judgment) may be effected, if every new comer to inhabit in a Town, and Servants newly entertained, within a week or fourteen days, be caused to repair to the Minister there in presence

This course will discover more than the Oath of Allegiance, and prevent many from falling off, by reason of the quick discovery.

sence of the Church-wardens and other honest men, to subscribe unto such brief and substantial Articles concerning faith and allegiance as shall be according to Gods word and justice ordained to distinguish the sheep from the Goats; in foreign Countreys every host is bound to bring his guest before an Officer, there to certifie his name, with the occasion of his coming, and intended time of abood in those parts, and in case he stay longer, he must again renew his licence; so curious and vigilant are they also to keep their Cities from infection, that without a Certificate witnessing their coming from wholsom places, they may not escape the *Lazaretto*; no less ought we to be watchful to prevent the contagion of our Souls, than the other Nations are of their bodies. Every thing is hard and scarcely pleasing in the beginning, but with time some such course may be readily put in execution, which I propound rather as matter for better heads to work on, than peremptorily to be insisted on in the same terms; but lest any charge me with temerity, that where I desire to know the multitudes inclination, by the means aforesaid, I satisfie my self with their Parrets language, pronouncing it knows not what, I think it not impertinent to put them in mind, that heretofore I have required instruction, both precedent

So long as houses and lodgings in London *are let to Papists, the Priests will be received, and from thence shall the Country be infected.*

If we can prevent the increase of Papists, those that now live must either be reformed, or in time yield to nature, and then shall a new age succeed of Christians, by education made Religious.

precedent and subsequent, and am ever of the mind, that though all this cannot be done at once, yet it is necessary always to be doing our best; knowing, that not to go forward in Religion, is the ready way to go backward; it is not the outward obedience of coming to Church, that discovers the inward thought of the heart, it is the confession of the tongue that must utter those secrets, and where the Curates are insufficient, or the Parish great, I wish they had Catechists to assist them, maintained by the purses of the Recusants, which pension being collected for Gods cause, will free us of scandal though it grieved them to pay the spiritual Army waged against their own stratagems; surely by giving them way in petty matters, they are grown to be very masterful in their party. *Plato* affirmeth that the popular state proceeded from the Licence which the people took to make immoderate applauses in the Theaters, when as by arrogating that immunity without controllment, in presence of their Governours, and perceiving the Nobility to joyn with them in the same passions, they thought their heads as worthy to govern, as any of those were made out of the same mould: In like manner while we suffer ignorance openly to maintain such petty glimps of Popery as are thought to be scarce worthy

thy to be looked at, in small matters run an indifferent course, which neither makes sure friends nor feeble foes, unawares they take the Bridle from us, and eat out Religion; as it were by an insensible *Gangræna:*

Principiis obsta, sero medicina paratur
Cum mala per longas invaluere moras.

For by sufferance of breaking small laws people are boldned to set the greater at nought.

The broachers of a bad cause being touched in Conscience, at the first move slowly, but if they prevail they grow tyrannous beyond measure.

To comprehend all things in a Law which are necessary to the reformation, I neither hold it profitable nor expedient, yet it is discretion to provide for the most important; smaller matters whereof the Laws speak not are to be commended to the discretion of Parents, Ministers and other Reverend persons, who by example and advice may prepare younglings by education and Custom to obey the Laws, especially such as are in high place ought in this behalf to be like *Cæsars* Wife, *Non solum Crimine, sed etiam Criminis suspitione vacare*, and with such circumspection to behave themselves, that the world may conceive, in requiring obedience to God, and their Soveraign, that they hold the multitude rather for companions than slaves; If great men take another way, they may seduce many by example, though by words they express not their concealed opinions, *Tace & loquere*, said God to Moses,

Most men will affect to be such as the highest Trusts, and Favours.

A great man is an Idol in the eyes of mean People, and draws many to imitate his actions.

Moses, it is the speech of the heart, which utters more than letters, or syllables. And in our common Laws it is held maintainance, when a great person only by his presence countenanceth a cause; neither let us secure our selves with this argument, The Papists are pliable in small matters, *Ergo*, they will yield in greater; And because they took no Arms in 88. therefore it were needless curiosity to suspect them now: for who knows not that small baits are used to take the greatest Fish, *Ut cum esca una etiam hamus devoretur.* Wariness is the sinews of wisdom, and nothing is more dangerous than to be secure in matters of State. Therefore for the Laws already made, I wish that the most effectual of them which least concern life, may be executed; for better it were not to make them, than by neglect to set them at liberty: Seeing that many offences there are which men would abstain from, if they were not forbidden, but when a strict Commandment is avoided without punishment, thereout springs an unbridled license and hardly to be reformed by any rigor.

Few Laws well executed are better than many.

To conclude, I say freely, that whoso endeth his days by a natural death, he shall be subject to many mens dooms for every particular offence; But when for Religions sake a man triumpheth over

over the sword, that one eminent Vertue razeth out the memory of other errors, and placeth him that so dieth in Paradise, (if common opinion may be lawfully vouched) which glory having many followers and admirers, maketh even dull spirits to affect their footsteps, and to sell their lives for the maintenance of the same cause. I need not envy the name of a Martyr to the Jesuite; for his cause, if it be rightly weighed, will blanch that title; but I desire to have all those Lineaments defaced, which may compound that counterfeit Image; in prosecuting of which purpose, if I have failed in my advice, and by confused handling, intricated the question, I humbly request, that a wise mans verdict may mitigate the heavinesse of the censure.

A Crown of Glory once attained, hath power to dispense with former faults.

It is neither good to praise bad Counsels, because of their good successe, nor to condemn good Counsels, if the event prove not Fortunate, lest many be animated to advise rashly, and others disheartned to Counsel gravely.

He Counsels best, that prefers the Cause of God, and the Commonwealth before any particular.

Ili mors gravis incubat
Qui notus nimis omnibus
Ignotus moritur sibi.

Seneca Trag.

August 11. *Anno Domini* 1613.

THE

THE MANNER AND MEANS HOW THE KINGS OF ENGLAND Have from time to time SUPPORTED And repaired their ESTATES.

Written by Sir *ROBERT COTTON*, Knight and Baronet, *Anno nono Jacobi Regis Annoque Domini* 1609.

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THE MANNER AND MEANS HOW THE KINGS OF ENGLAND Have from time to time SUPPORTED And repaired their ESTATES.

THE Kings of *England* have ſupported and repaired their Eſtates,

Firſt, by an Annual proportioning their Iſſues, and Expences with their certain and Caſual Revenues.

And that either by { Advice of their *PRIVY-COUNCIL*, Or, by *PARLIAMENT*.

Secondly, By abating and reforming the Excess of houshold, *&c.*

Thirdly, By raising of Money, and improving the Revenues of the Crown.

First, For proportioning of the Issues, &c.

Hen. 4. *Ex rot. orig. inter acta Concil. Hen.* 4.

Henry 4. *Anno* 12. When the Revenue and profits of the Kingdom, together with the Subsidy of Wool, and Tenth of the Clergy, amounted to no more than 48000 *l.* of which 24000 marks were alotted for expence of House; most of the rest to the Guard of the Sea, and defence of this Kingdom, the Realm of *Ireland*, and Dominions in *France*: In this estimate the profits by Wards and Marriage, was but 1000 *l.* And then an Ordinance was made by the King, Prince, and all His Council there named in the Roll.

The like was *Anno* 11. when for the charge of House was appointed 16000 *l.* and 7000 *l.* to the City of *London*, in discharge of the Kings debt to them.

Henry 5. *Ex rot. in actis Concil. anno* 2. *Hen.* 5. *in Fin.*

Hen. 5. *Anno* 2. did the like as his Father, entring upon the Roll as an Ordinance in future, that the Treasurer of *England*, or the *Exchequer*, shall Annually make declaration of the state of their Office, and the Revenue of the Realm, together with the charge of the Kings House, Chamber, Wardrobe, Garrisons, Navy and Debts.

Anno 3. *Hen.* 5. the like Assignments were

were made proportionable to the Revenue which in the great Custom of Woolls, the petty Custom, Tunnage and Poundage, revenue of *Wales*, and the Dutchy of *Cornwal*, the Hamper, the accounts of Sheriffs, Escheators, the Exchange or *Bullion*, and the benefit of Wards and Marriage (then rated at but one thousand marks apiece) rose not to above 56966 *l.* And being at such time as he undertook the Conquest of *France*.

Ex rot. orig. an. 3 Hen. 5.

Anno 9. Henry 5. the revenue of the Kingdom amounting to 55743 *l.* 10 *s.* 10 *d.* was so by the King, with advice of his Council, ordered, as before.

Ex ordinat. anno 9 Hen. 5.

And by this Record it appeareth, that the Clerks of the Navy, and not the Treasurer was the Officer only for that place.

Hen. 6. anno 12. in Parliament, *Cromwel* then Treasurer, delivering up an account of the *Exitus* and *introitus* of the Exchequer, setled the Estate of his expence, of which there was allowed for his House 16978 *l.* and to his Chamber and Wardrobe 2000 *l.* The rest to defray the debts and necessary occasions of the State.

Hen. 6. Ex rot. Par. anno 12. Hen. 6. n. 24.

Queen *Eliz. anno* 12. At which time besides the Wards and Dutchy of *Lancaster* the profit of the Kingdom was 188197 *l.* 4 *s.* the payments and assignments 110612 *l.* 13 *s.* of which the Household was 40000 *l.* privy Purse 2000 *l.* Admiralty 30000 *l.* which by an estimate 1. *May*, *anno* 1604. was 40000 *l.*

Queen *Eliz. Ex comp. Dni. Burghley Thesaur.*

And is now swoln to near 50000l. yearly by the error and abuse of Officers.

SEcondly, by abating and reforming the Excess.

1. Of Houshold.
2. Of Retinue and Favourites.
Of Gifts and Rewards.

First, For abating and reforming the Excess of Houshold, either,

by { Parliament, or, Council Table.

1. *By Parliament.*

Edw. 2: Ex Angl. M. S. folio 29.

Anno 3. Edw. 2. An Ordinance was made *pro hospitio Regis*, in ease of the people oppressed with Purveyance by reason of the greatness thereof; and the motive of that Ordination was, *A l'honneur de Dieu, & à honneur, & profit de sainct Eglise, & a l'honneur de Roy & a son profit, & au profit de son peuple, selon droit & resonel serment que le dist nostre Signeur le Roy fist a son Coronement.* About this time was the Kings House new formed, and every Officer limited his charge and salary.

Ex libro Do. Aula Regis.

Edw. 3. Rot. Parl. anno 36. Edw. 3.

Anno 36. Edw. 3. the Houshold was reformed at the Petition of the People.

Rich 2. Rot. Parl. 1. Rich. 2.

Anno primo Rich. 2. the Houshold was brought to such moderation of expence, as may be answerable to the revenues of the

the Crown. And a Commission granted at the Petition of the Commons, to survey and abate the houshold; which not taking desired effect, *Anno* 4. the Commons petition that the excessive number of menial servants may be remedied, or otherwise the Realm will be utterly undone, and that his houshold might not exceed the ordinary revenues of the Realm.

Rot. Parl. an. Rich. 2. Rot. 4. Parl. an. 5 & 6. Rich. 2.

Anno 4. *Henry* 4. The people crave a reformation of the Kings House. And *Anno* 7. that he would dismiss some number of the retinue; since it was now more chargeable, but less honourable than his Progenitors; and that the Antient Ordinances of the houshold, in ease of the people might be kept, and the Officers of the houshold sworn to put the Ordinances and Statutes in due execution, and so consider the just griefs of his Subjects by unjust Purveyance contrary to the Statute. That hereafter *vous poiez vivre le voz biens propres en ease de vostre peuple*, which the King willingly doth, as appeareth by an ordination in Council, whereby the charge of the houshold is limited to 16000 Marks.

Hen. 4. Rot. Parl. an. 4. 7 & 11. Hen. 4.

Ex Ordinat. in Rot. Act. Concil. an. 11. Hen. 4. marked *R. R.*

Anno 12 & 18. *Henry* 6. The charge of the Kings House is reduced to a certainty, and lessened by Petition and Order in Parliament.

Hen. 6. Rot. Parl. an. 12. 18. Hen. 6.

Anno 12. *Edw.* 4. The King promiseth to abate his houshold, and hereafter to live upon his own: So setling a new form

Edw. 4. Ex. Rot. Parl. an. 12. Edw. 4.

Ex. lib. ordin. Hospitii temp. Edw. 4.

his Court which is extant in many hands, Intituled, *Ordinations for the Kings house.*

Rot. Parl. an. 27. Edw. 3. 7. Hen. 4. n. 3. Mich. recep. 27. Hen. 6. n. 9.

And to ease the charge of the Kings house, the Queens have allowed a portion of their joynture suting to their own expence to the Treasurer of the houshold, Thus did *Philip* the wife of *Edward* 3. and likewise *Henry* 4. wife *anno* 7. And *Henry* 6. wife allowed 2000 *l.* a year out of her Estate.

2. *Excess of the Houshold abated and reformed by the Council-Table.*

Edw. 2. Ex Aula Regis fact. temp. Ed. 4.

Edward 2. caused his houshold to be certain in allowances, making thereof a book by the way of ordinance, which is called *Aul. Regis.*

Hen. 4. Act. Concil. 8. Hen. 4. marked P. P.

Henry 4. causeth his Son the Prince, and the rest of his Council, to ordain such moderate governance of his House, that may continue *au plaisir de Dieu & de peuple.*

Hen. 6.

Henry 6. *anno* 17. reduced his charge of House to 12000 *l.* whereof 2000 *l.* was out of the Queens joynture.

Ed. 4. Ex. lib. ord. tem. Edw. 4. Ordinat. Car. Wolsey Hen. 8.

Edw. 4. *anno duodecimo* reformeth it again, and publisheth a book of orders for their better direction. Which after Cardinal *Woolsey* for the more honour and profit of the King amendeth, and that still remaineth the ground-work of the present Government: Which being now so much corrupted, it may seem fit either,

either to put down the Tables, and leave all attendants to allowance of money, as *France* and *Spain* doth, or else by setting up the Hall again, reduce the houshold to the best, first, and most magnificent order. So all things being spent in public, will be to the Kings honour, and the secret waste by Chamber, diet, and purloining, prevented to the Kings benefit. For there is never a back-door in Court that costs not the King 2000 *l.* yearly, and few mean houses in *Westminster*, that are not maintained with food and firing, by the stealth of their Court-Instruments.

By abating and reforming the excess of Retinue and Favourites.

Thus did *Henry* 2. with *William de Ipre* Earl of *Kent*, a *Netherlander*, and all his Countreymen and followers, when they grew heavy and a burthen to this State, unable to foster more than her own natural children. *Hen. 2. Ex Gervas. Dorobern.*

Thus *Richard* 1. did with *Otho* Earl of *York*, and all the *Bavarians*, although he was the Son of his Sister, taking from him that Earldom, for that the People opposed it, and giving him in exchange the title of *Poictiers*. *Rich. 1. Ex Richardo canonico in vita Rich. 1.*

Thus *Henry* 3. did with his half-brethren the Earl of *Pembroke*, and the Bishop of *Winchester*, and all the *Poictovins* their followers. *Hen. 3. Ex lib. S. Albani & Wil. Rishang. & lit. Baron. Papæ.*

Edw. 2. Ex ordinat. 3. Edw. 2. in li. legum manuscript. fol. 285.

Thus did *Edward* 2. by his Ordinances, *Que tout le lignage Sire Pieres de Gaveston soit entirement ouste de estre entoines le Roy & de son service. Item Burgois de Til soit ouste & son fias que est mereschal del Eschequer. Item que Bertram Assabi & son Frere & ceux de Gascoigne, & Aimyrick de Friscomband soint oustre & ses terres prises en le main le Roy.*

Rich. 2. Ex Rot. Parl. an. 10. Rich. 2.

Thus *Rich.* 2. did with the *Bohemians anno* 10. by an Act of Parliament at the petition of the people surcharged.

Hen. 4. Ex Rot. Parl. an. 7 & 12. Hen. 4.

Thus *Henry* 4. did likewise with the *Gascoignes* and *Welsh* overburthening and impoverishing the King and Realm with perpetual suits, so that in Courts (as the Record saith) there were *ne ad mill substance des personnes vaylantes & suffesants: Si Besoigne seroit mes de Rascaile pur la grendre part.*

By abating and reforming the excess of Gifts and Rewards.

Rich. 2. Rot. Parl. an. 21. Rich. 2. an. 2, 4, & 5. Hen. 4. n. 9.

Hence was it that the wisdom of former time, foreseeing the mischief that the open hand of the Soveraign may bring, the State made a Law 21 *Rich.* 2. that whatsoever cometh to the King by Judgment, Escheat, Forfeiture, Wardship, or any other ways, shall not be given away, and that the procurer of any gift, shall be punished.

Hen. 4. Rot. Parl. an. 7. Hen. 4.

This the Parliament continued 7 *H.* 4. until the King were out of debt, making frustrate the grant, and ordaining a penalty

nalty of double value to every mover or procurer of any such.

The like *anno* 11. *Henry* 4. And that no petition for any thing should be delivered the King, but in the presence of the Council, who might examine it, lest the King's wants should light upon the Commons. *Rot. Par. ann. 11. H. 4. n. 23.*

And to keep the hand of *Henry 6.* from wastful giving, the Council induced him to convey to the Arch Bishop of *Canterbury* and others, all profits by Wards, Marriages, Reliefs, Escheats and Forfeitures, to defray the charge of his house. *Hen. 6. Pars. Parl. 2 an. 25. Hen. 6. m. 24.*

It is one of the greatest accusations against the Duke of *Somerset*, for suffering the King to give away the possessions and profits of the Crown in manner of a spoil: for so are the words of the Record. *Ex rot. Parl. an. 28. Hen. 6.*

And it was made the first and chiefest Article to depose *Richard* 2. for wasting and bestowing the lands and revenues of the Crown upon unworthy persons, and thereby over-charging the Commons by exaction. *Rich. 2. Ex rot. Parl. an. 1. Hen. 4.*

THirdly, Raising of money, and improving the Revenues of the *Crown.*

Either by the { Grant of the Subject, Or Power absolute in the Sovereign.

1. Grant

1. Grant of the Subject, which is { General, as in Parliaments. Or Particular by Lones { Compulsive Or Benevolent.

Ex lib. rub. in Secto.

General, as in Parliaments, wherein they give the King part of their own, by way of Retribution only; as

For Defence of the State.

Ex Jo. Eversden.
Ex hist. Roffens.
Ex rot. Parl. temp. Ed. 3.
Ex rot. Par. annis 2, 3, 5. Rich. 2.
Rot. Parl. 8, 9. Hen. 4.

Hence grew the *Scutage* granted to *Hen.* 2. *Richard* 1. *John* and *Henry* 3. to *Edward* 1. divers Fifteens and Tenths for his wars against the *Scots* and *Welshmen.* The Subsidy of Wools and other Contributions to *Edwnrd* 3. for his Wars: And the like granted to *Rich.*2. *annis* 2.3. 7. so they may be imployed in the Wars: and particular Treasurers to accompt in Parliament. So in the 8 and 9. of *Hen.*4.on the like condition.

Ex Rot. Parl. an. 13. *Hen.* 4. *&* 1 *Hen.* 5.

Tunnage and Poundage begun the 45. *Edw.* 3. had hence its original; and therefore 13. *Hen.* 4. and 1. *Hen.* 5. they are granted so in express words; and that they proceed of good will, and not of duty. Precedents of this nature are plentiful in all the Rolls.

For maintenance of Religion and the Church.

As in the year 1166. to *Hen.* 2. was given

given twelve pence in the pound: and the 18. *Edw.* 1. a fifteenth was granted to expel the Jews. And *Anno* 4. *Rich.* 2. a tenth of the Clergy, and a fifteenth of the Commons, for his help to suppress the *Wicklivian* Heresie.

Ex Benedict. Monacho in vita Hen. 2. *Ex Adam. Merioneth ex Rot. Par. anno* 4. *Rich.* 2.

For support of the Laws and liberty of the Common-Wealth.

So did the State to *Hen.* 3. *anno* 27. for confirmation of the great *Charter*, for the like *anno* 15. was granted 29. *Edw.* 1. and 13. *Edw.* 3. and 7. *Hen.* 4. That the Laws may be executed against Purveiors.

Ex Rad. Cogshal. Ex hist. Roffen. Rot. Par. an. 23. 3. *&* 7. *Hen.* 4. *Ed.* 1. 13. *Ed.*

For redress of the Aggrievances.

As in the 15. *Edw.* so that the King would perform their petitions, or else they held themselves not bound to pay the ninth they had given.

Rot. Par. anno 15. *Ed.* 3. *n.* 16.

The like was the 7, 8, 9, 10. and 11. *Rich.* 2. The 10. and 15. granted the 4. and 7. of *Hen.* 5. is upon condition, that the King laid no impositions upon the State. And 7. *Edw.* 4. the State relieveth the King, so he will promise to live hereafter upon his own, and not burthen the State, the which he there protesteth to perform.

Ex rot. Par. an. 7, 8, 9, 10, 11. *Rich.* 2. *Ex rot. Par. an.* 4. *&* 7. *Hen.* 5. *rot. Par.* 7. *Edw.* 4.

And it is to be observed that to improve the grants of Subsidies to the extreamest

Ex original. an. 3. *Rich.* 2.

value, there were new Commissioners appointed to survey and advance mens fortunes above the estimate of the former taxes, and Commissions have been granted out, as 3. *Richard* 2.

Or to enable him out of his own by an Act of Resumption of Lands, offices, annuities.

Rot. ordinat. an. 5. *& claus. an.* 9, *&* 10. *Edw.* 2.

Thus did *Hen.* 3. *anno* 6. and *Edw.* 2. *anno* 5. to 9. & 10. by an ordination of the Prelates, Earls and Barons.

Rot. Par. an. 1. *Rich.* 2. *Rot. Parl. an.* 1, 2, *&* 6. *Hen.* 4.

All grants made by *Edw.* 3. to unworthy persons, *Rich.* 2. resumed *anno primo*, and by *Hen.* 4. *anno* 6.

All Pattents for life or years since 4. *Edw.* 3. were resumed.

Ex Rot. Par. an. 1. *&* 2. *Hen.* 5.

At the petition of the people *Hen.* 5. revokes all grants out of the principality made to unworthy persons, and all annuities out of the customs of wools, deducting out 10000. *l.* a year out of all other annual pensions ratably, leaving the remain, if any, to the Patentees.

Rot. Par. anno 28, 29. 3. *Hen.* 6.

Hen. 6. *annis* 28, 29. 33. resumeth in *England* all Lands, Offices, Liberties and Grants from *anno primo*, and the like *anno* 21. in *Ireland*.

Ex act. Cons. an. 21. *Hen.* 6. *Rot. Par. an.* 2. *Hen.* 7.

So did *Edw.* 4. *annis* 4. 7. 12. And *Hen.* 7. *anno* 2. resumed all grants made by *Edward* 4. or *Richard* 3.

Parti-

Particular by { *Lones* Or *Benevolences.* } { *Voluntary*, Or *Compulsive.* }

First upon the Lones Voluntary, as upon assurance of Bond of the Nobility.

So was *William de la Poole* bound for *Edward* 3. *anno* 13. in great sums, and the Duke of *Glocester anno* 20. *Hen.* 6. and the Cardinal pawned his silver Vessels for *Hen.* 6. debt.

Rot. Parl. an. 13 *Ed.* 3. *act. concil.* 20. 22. *Hen.* 9.

Upon pawn of Jewels.

Thus did *Hen.* 3. *anno* 26. to the Arch-bishop of *York*, and when his own were at gage, he took *Aurum & Jocalia feretri sancti Edwardi Confessor.* and pawned them.

Claus. an. 26. *Hen.* 3.

Edward 1. imployed one *Andevar ad jocalia sua impignoranda.*

Clau. 29. *Ed.* 1.

Edward 2. pawned his Jewels to the Lord *Beaumont.*

Rot. fran. an 9. *Edw.* 2.

Edw. 3. pawned *Magnam Coronam Angliæ* to Sir *John Wessingham* for 8. years.

Commune insc. 30. *Edw.* 3.

Richard 2. pawned *vasa aurea et diversa jocalia* to Sir *Robert Knolls.*

Parl. anno 7. *Rich.* 2.

Henry 4. *Invadiavit tabellam et tresellas suas argenteas de Hispania.*

Henry 5. pawned his great Crown to the rich Bishop of *Winchester.*

Parl. anno 5. *Hen.* 5.

Hen. 6. to the same man then Cardinal pawned

Par. an. 10. 12. 29. *Hen.* 6.

pawned many parcels of his Jewels in the 10, 12. and 29. of his reign, and the like to many others.

And the late Queen to eaſe her people, did the like with her Jewels in the Tower beſides the often morgage of her land.

Lones voluntary upon Aſſignments of Cuſtoms and Subſidies.

Act. concil. an. 22. *Hen.* 6. *Ex billa ſign. an.* 15. *Hen.* 6. *&* 12. *Edw.* 4.

So did Cardinal *Beauford* lend 10000. *l.* to *Hen.* 6. *anno* 22. upon ſecurity of the Cuſtoms of *London* and *Southampton*, the King indenting to turn the courſe of moſt trade thither. And *Hen.* 6. *anno* 15. and *Edw.* 4. *anno* 12. did ſecure their debts by aſſignment over of the next Subſidy or aid that ſhall be granted from the Church or Laity, to them, being a deviſe in truth to draw on a ſupply the ſooner from the State.

Lones voluntary upon the Great Seal, or the Privy Seal.

Rot. original. an. 3. *Hen.* 4. *marked* B. B.

The Great Seal, under which they ſhould have without paying Fee a Patent ſealed for repayment of their dues by a day certain.

The Privy Seal, which is of late the moſt in uſe; and it is worthy of obſervation to ſee the willingneſs of former times in reſpect of theſe.

Rot. act. conc. 13. *Hen.* 4.

In the 13. of *Hen.* 4. there is a Roll intituled

intituled *les nomes de ceux que ont da prester au Roy les sommes escrits.* The Archbishop of *Canterbury* lent 1000 Marks, the Bishop of *Lincoln* as much, the Bishop of *Norwich* 600 *l.* the Bishop of *London* 500 Marks, the Bishop of *Bath* 400 Marks, the Lord Privy Seal 200 *l.* the Clerks of the *Chancery* 1000 Marks.

Rot. act. concil. 13. Hen. 4.

Particular Grants of the Subject by Lone compulsive.

So were the Merchants of *Florence, Venice* and *Luke*, compelled by an order in Council 3. *Hen.* 3. because they had by *grace et sufferance du Roy graunts, priviledges et reportants grand lucre pour le exercise de leur Merchandre en le Angleterre.* And the persons that refused to lend, were committed to the Fleet, neither were the *English* more free, in *anno* 30. *Henry* 6. divers being enjoyned to attend the Council-table, or else to pay the demanded Lone.

Ex ordinat. Concil. an. 3. Hen. 5 marked N. N.

In the time of *Hen.* 8. *anno* 14. of his Reign, he exacteth by way of Lone, ten pounds in the hundred of all Goods, Jewels, Utensils and Land, and according to the extreamest rate revealed by Oath of the possessors. Notwithstanding there is a Law 2. *Richard* 2. that none shall be denyed in demand of any Lone, his reasonable excuse.

Ex instruc. Comiss 14. Hen. 8. Rot. Parl. 12. Rich. 2.

Par-

Particular Grants of the subjects by contribution or Benevolent gifts.

Ex Charta Episcop. Cant. Ro. claus. 19. Edw. 1. claus. 35. Edw. 3. Ex instruct. original. 20. Hen. 6.

These were of old usual and free, and therefore called *Liberalitas populi*, by *Rich.* 1. And *Curialitas*, by *Ed.* 1. *Ed.* 3. *Hen.* 4. & *Hen.* 5. confessed to proceed *ex spontane a voluntate, nec de jure vendicare potest.* Yet did *Hen.* 6. *anno* 20. in an instruction to Commissioners imployed in procuring a *Benevolence*, say, that for so much as by the Law he might compel all his Subjects, and at their own charge to attend his; yet he was contented to spare such as would but contribute as much after his degree and reputation, as two days in his personal service would stand him in, thereby implying a necessity in them to give, to escape a further expence.

Ex act. Parl. an. 3. *Mariæ.*

This Law, upon which *Hen.* 6. grounded himself, was a Statute in Q. *Maries* time repealed. And that since repealed this last year, hath made a reviving of the former, whereby the King re-admitted into his old advantages, and the subject in the former mischief. And *Hen.* 8. *anno* 17. Although he entituleth the *benevolence* he sought with no other stile than an amicable grant, yet he threatened the refusers with convention before his Council, imprisonment, and confiscation of Goods.

Ex instructione origin. 17. *Hen.* 8.

The

THe Kings raise money, and improve the revenues of the Crown,

by power absolute in the Soveraign, in disposing, { 1. Lands, 2. Merchandize. 3. Regalities.

1. Lands, as by selling; which hath been often and old, if they were not of the Antient demeasne-land, which our forefathers held impious to alienate from the *Crown*, and those were such Lands as go under the title of *Terra Regis*, in the Book of Domes-day; and were the Lands of *Edward Confessor*: of other Lands I never observed question, neither do ever find that Acts of Resumptions ever reached to Lands that were sold for valuable consideration. *Lib. Domesday.*

By passing in Fee-farm, except places of the Kings Residence, Parks, spacious Wastes or Forrests, all the Lands of the Crown, which remain either in the annexation, custody Lands, or Queens jointure, and exceed not yearly 32000 *l.* These, although largely estated out in several natures, some for lives, some for years; will one with the other be advanced to a treble rent, which amount to 96000 *l.* leaving an annual improvement of 64000. And if the offer be not made restrictive for the new Tenant, there is no doubt but his Majesty shall find ready and hearty undertakers amongst the Gentry and Nobility too,

who have any place of Residence near any his Majesties Mannors; and the Kings security the better, since their abilities will settle the Fee-farm rent upon more Land than the purchase.

If any shall object against this, a loss by Fines and Profits of Courts, a prejudice in not serving necessity (as of late) by sales or diminution of Regalities in seisure of so many Royalties. It may be answered to the first, that the casual profits of Courts never defrayed to the present Officers their fees and expences; and this appeareth from a collection made the 44. year of the late Queen, where the total issue of such certain charge exceeded the receipt of such chances above 8000 *l.*

To the second, if looking upon the several rates of the Kings Land, exposed to Fee-farm sales, we find some at 50 others at 21 years, as to the late contracters, and make out of these extreams a *medium* of the largest 40 years, and set on the other side the Common and current estimate for dead Rents 15 years purchase: We must find that 50 *l.* Land sold un-improved respectively to the like trebled by a Fee-farm, will be 250 *l.* loss to his Majesty in the sale. As for Regalities, though it may add somewhat to a Subject, in increasing such his petty command, it can nothing to a Soveraign, whose transcendent power drown's in it all such subordinate

dinate dependences and regards. But if we consider besides the former improvement, the increase of casual advantage, and diminution of certain charge, we shall have just cause not to continue this course; for if the Commissioners in this business, may be ordered by instruction to reserve upon every Mannor of above 30 *per annum*, a tenure in Knight-service by half a Fee, and of above 50 *l.* in Capite by an intire Fee, and of the purchase to pay his Rent into the receipt himself half yearly, and strike there his Tally: the former will advance the revenue accidental of the Crown in Wardships, *primier seisin*, alienation and aides; and the latter cut off at once so many their unnecessary Receivers, Auditors, Stewards, Bayliffs and Clerks, as stand the King in yearly above 12000 *l.* As for other dues or casual Revenues, which now fall under the charge of these Officers, the Collection and payment may be as it hath been with the rest from the time of *Hen.* 2. until of late days laid on the Sheriffs of the Shire, and all the accounts left to the 2. Auditors of the press to draw up, and Clerk of the Pipe to enter in *Magno rotulo*, as in former time, for it must seem strange to all men of judgment, that it should be with those Officers (who had their beginning but since the 25 year of *Hen.* 8. by addition of his new revenue of 150000 *l.* from the sup-

preſſed Monaſteries) otherwiſe than with all things in nature and reaſon, *Ceſſante Cauſa ceſſat effectus*, not to be diſcontinued, when as all Crown-annexed Lands that gave them their juſt imployment, are for the moſt part paſſed from the Soveraign into the Subjects poſſeſſion.

Beſides this of the general diſpoſing in Fee-farm, there hath been a project in particular to infranchiſe the Copy-holders in the ſeveral Mannors, which I ſhould hold to be of more prejudice to his Majeſty than the others, bringing with it all the former *inconveniences*, loſs of Fines, Regalities, and advantages of ſale, and being without many of the advantages, as Wardſhips, *Primier Seiſin*, alienation and aids; for no man will buy quillets but in ſoccage, & diſcontinuance of Officers, who muſt ſtill remain, though they can bring the King but little benefit.

Kings raiſe money, and improve their Revenues, by Farming out for years, Lands, Caſualties, or Waſtes.

Rot. Parl. an. 7. Hen. 4.

As in the 7 *Hen.* 4. the State held it more juſt to help the King out of his own than to burthen the Common-wealth, and therefore gave way by Parliament to the King to improve up his Lands, though in Leaſe, provided that the Leſſee ſhould have refuſal of the bargain if he would.

Rot. fin. an. 2. Edw. 2.
Rot. Parl. an. 15. Edw. 2.

Edw.

Edw. 1. *anno* 2. granted a Commission to farm out all such wastes, *Quod absque injuria alterius fieri potest*. And in *anno* 15. asserted a great part of his Woods for rent, and disforrested in most Counties of *England* for a sum of mony they gave him.

And it was not the least of charitable thrift in the King, to reduce much of his waste to habitation of Christians, especially the remote Forrests, which would increase many thousand Families for his service, and bring many thousand pounds to his Coffers. *Rot. claus. an. 7. Edw. 2.*

But in the carriage of this business there must be much caution to prevent commotion, for in them there are many that have right of common *sans nombre*. And the resolution in agreement with them must be sudden, and confident, for multitudes are jealous and inconstant. And the instruments to effect this, must be such as are Neighbours, interessed and popular, not strangers; And the first demise to the inhabitants, and at under and easie values.

Kings raise money, and improve the Revenues of their Crown, by manuring of Land.

Thus did *Hen.* 3. *anno* 13. in removing out of most of his Parks, as *Gillingham*, *Brigstock*, *Cliff*, *Woodstock*, *Haverel*, &c. all mens Cattle *pro bobus*, *pro Lardaria Regis in Parcis prædictis impinguendis*. *Rot. claus. an. 13. Hen. 3. memb. 10.*

Rot. fin. 2. & 3. Edw. 1.

And *Edw.* 1. commanded all the Escheators in *England*. *Excolere, seminare & appropriare ad maximum Regis proficuum omnes terras, quæ regi & coronæ suæ devenerint per mortem aliquorum, vacationem Episcopatuum*, &c.

KIngs raise money and improve the Revenues of their Crown,

By Merchandise
- 1. *Trading themselves.*
- 2. *Licencing others to trade in Commodities,* { *Lawful or unlawful.*
- 3. *Improving Customs.*

1. *Trading themselves.*

Rot. Vascon. 22. Edw. 1.

Thus did *Edw.* 1. *anno* 22. seise into his hands all the Wools in the Kingdom, as the Merchants were lading them in the Ports, giving them security of payment at a long day, and a short price, and then transporting them to his own best and readiest sale.

Rot. Almaig. 12. Edw. 3.

Thus did *Edw.* 3. *anno* 12. with all the Tin.

Act. Concil. an. 20. Hen. 6.

And *Hen.* 6. *anno* 20. by advice of his Council took up by way of purveyance great store of Grain, and transported it into *Gascoigne*, where by reason of a dearth, the price was extream. In *anno* 31. he arrested all the Tin in *Southampton*, and sold it to his own present use: and in the year following using the advantage of the Statute, which bound

bound all men to trade the staple Commodities to no other place but *Callice*, vented himself many Sacks of Wool to other Ports of better advantage.

And the late Queen *anno* 1567. causeth by warrant of Privy Seal a great proportion of Beer to be purveyed, transported and sold to her use beyond the Seas. *Warrant. sub privat. sigill. an. 9. Eliz. Reginæ.*

KIngs raise money and improve the Revenue of their Crown

By licencing others to trade Commodities. { *Lawful* / *Or* / *Unlawful.*

1. *Lawfully, but solely.*

Thus did *Hen. 6.* by approbation of Parliament, with all the trade of *Allome*, for two years granted to the Merchants of *Southampton* for 8000 *l.* And again for the like sum to those of *Genoa*. *Rot. Parl. an. 29. Hen. 6. n. 15.*

2. *Unlawful or Prohibited.*

Thus did many of the Kings, (after such time as the heavy burthen of imposition began in the miserable necessity of *Hen.*3. called then by no better name than *Maltolt*) and continued until the 15. year of *Rich.* 2. by divers intermissions, for then I find the last petition of many in Parliament against it, was altogether taken away. For when *Rich.*2. and his Successors found the Revenue lessened, by the importunate cry of their People, whereby impositions were laid *Rot. claus. an. 19. Hen. 3. Rot. Parl. 15. Rich. 2.*

aſide, they began to adviſe another ſupply out of the unbounded power of ſuppoſed prerogative, and finding a greedy deſire of one Merchant to prevent another of his market (reſtrained by that Act or *Statute*, which tyed them to one time, and to one Port *Callice*, for all ſtaple commodities) they uſed to ſell Licences with a clauſe of *Non obſtante* of any ſtatute, whereby they diſpenſed with multitudes to trade with what commodities, and to what places they would.

Ex billa ſignat. an. 20. *Rich.* 2.

To the Merchants of *Newcaſtle Rich.*2, gave leave to carry wool-fells, *&c.* to any other Port beſides *Callice*, upon condition that they ſhould pay for them Cuſtom and Subſidie according *Le ſage diſcretion de vouz ou de voſtre ſage Council.*

To divers Citizens of *London Hen.* 4. in the like ſort diſpenſeth for great quantity of Tin for ſeven years, paying 400 *l.* yearly above the uſual Cuſtom.

Ex petit. an. 3. *Hen.* 6.

*Hen.*6. *annis* 6.21. 30. reneweth to the Town of *Newcaſtle* the ſame licence they had *anno* 20. *Rich.* 2. and granteth 600.

Ex act. Concil.

ſacks of Wool to *Benedict Benoni* Merchant of *Florence*, with *non obſtante* any ſtatute or reſtraint: In this year ſuch Licences were ſo frequent, that the Town of *Callice* complained in Parliament of their decay thereby; yet without relief as it ſeemeth. For the ſame King *anno* 36. giveth leave to *Lawrence Barbarico* to tranſport from *London* to

Ciceſter

Cicester 12000 sacks of Wool to what Ports he list: And *Edward* 4. *anno* 10. borrowing 12000*l.* of divers Merchants, permitteth them *non obstante* any Law to carry any staple Commodity to the *Straits* of *Morocco* until they were satisfied their sum.

Ex billa original. an. 10. *Edw.*4.

Henry the 7. raiseth much money, by giving leave to many Merchants to trade inward and outward Commodities prohibited, as to *Alonso de Burgues* great proportions of Ode *Anno* 6. and to a multitude of others all kind of grain and other forbidden things, as in *annis* 20, 21, 22.

Ex lib. comp. inter Hen. 7. *& Dudley.*

KIngs raise money and improve the Revenues of the Crown, by improving Customs.

By { 1. Farming out of Ships.
2. Raising the book of Rates.
3. Farming the Customs. }

1. *Farming out of Ships.*

To the Merchants, and taking security of them, either to bring in or carry out yearly asmuch Commodities, as shall yield the King in Customs the sum agreed on, or else to make it up out of their own money.

Thus did *Hen.* 7. many years, not only with his Ships, but with divers stocks of money.

Ex lib. Hen. 7.

2. *Raising*

2. *Raising the book of Rates.*

Rot. Almaign. 3. Edw. 3. Rot. claus. 29. Ed. 1. Extract. Bruxellis.

This was in some sort done *Consensu Mercatorum* by *Edw.* 1. and *Edw.* 3. and again in *H.* 8. time, of which the house of *Burgundy* complained, as against the treaty of entercourse; and of late so stretched, as it is feared it will prove the overthrow of Trade: neither do I find this course at any other time.

As a branch of this, may aptly fall out the benefit Princes made by a Prerogative power of imposing inward and outward upon Comodities, over and above the antient Custom of Subsidy. The first that used this course after the Statute was setled, from a King of voluntary government after the Conquest (when as Kings ruled more by the edg of the Sword than by rule of Law) was *Henry* 2. about the entrance of his Reign; but finding it to be an apparent overthrow of Commerce and Trade, and against the great Charter; made Proclamation *anno* 16. in all Ports of *England* that all Merchants might come *facienda rectas & debitas consuetudines, nec sibi timeant de malis toltis*, for it had no better name than *Maletolts*.

Magna Charta 30.

Dors. claus. an. 16. Hen. 3. n. 30.

Some impositions being laid by *Edw.* 1. he in *anno* 25. taketh them away, with promise that neither he nor his Successors should do any such thing without assent of the Parliament, granting in *anno* 31. to the Merchants many immunities, as release

Statut. an. 25. Edw. 1.

Rot. Parl. 31. Edw. 1. cap. 1. & 2.

release of prisage, for which they require him with some increase of Customs, but not as imposed by his own power: For he in *anno* 34. declareth that no tallage or aid should be levied without the assent of Parliament, nor nothing to be taken of Woolls by colour of *Maletolt*.

In *Edward* 2. time, it appeareth that levying of new Customs and raising of old, was the destruction of Traffick, and therefore repealeth all *Maletolts*, only in *anno* 11, 12. taketh by way of Lone, and with leave of the Merchants, some former increase upon Woolls, ascribing nothing to any supreme power to impose.

Rot. claus. an. 11. Edw. 2.

The like did *Edw.* the 3. *anno* 1. confirming in *anno* 2. the great *Charter* for free Traffick: but having about *anno quinto* granted certain Commissions for a new kind of raising tallage, the People complained the year following, whereupon he repealed the said Commissions, and promiseth never to assess any, but as in time of his Ancestors. After in *an.* 11. by reason of a Statute then made (restraining all men upon pain of death for transporting any Wolls without licence from the King and Council) *Edward* the 3. made great advantage by selling of Dispensations to that Law, and grounded upon it many impositions; but it grew so heavy upon the People, that their discontentments so far increased, that the King was enforced to cause the Arch-

Rot. fin. 1. Ed. 3. Statute 2. Edw. 3. cap. 9. Rot. Parl. 6. Ed. 3. Stat. 11. Ed. 3. cap. 1.

Ro. Almaign. 12. Edw. 3. memb. 22. indors.

Bishop

Bishop of *Canterbury* to perswade them to patience by his Godly exhortations, yet notwithstanding he continued by gentle intermissions the advantage he had by that late *undecimo*, taking an improvement of Custom for opening the passage that thereby was shut in *anno* 13. until the same year the State made *purchase* of their former freedom, and discharge of the *Maletolt*, by granting the tenth sheaf and fleece, &c.

Stat. 13. *Ed.*3. *Rot. Parl.* 13. *Edw.* 3. *Stat.* 14. *Edw.* 3.

And thus it continued all his Reign, being a time of great necessity and expence by reason of his Wars, he sometimes taking an advantage either to raise an imposition, or else to gain aid from the People in discharge thereof, they continually urging the injury in barring them their birth-right: And the King on the other side the greatness of his own occasions, and it may be gathered by Record, that thus it held on until the 15 *Richard* 2. in which year is the last petition against impositions, generally grounded in likelihood from the Kings power in restraining or permitting trade all the time after; though licences with *non obstante* were ordinary, yet were they to private persons and for particular proportion of Commodities, whereby the Kings succeeding raised no less benefit than by sale of any general permission. To this of Imposition I may add the rule I find *anno* 12. *Henry* 6. made in Council,

Licence granted by Henry 4. *Henry* 9. *Henry* 6. *to many Merchants with* non obstante *any Statute.*

Ordinat. Concil. anno 12. *Henry* 6.

Council, that the value of all goods for the payment of Subsidy, shall be rated of Commodities domestick as they may be sold between Merchant and Merchant: And if Foreign, then so as it shall appear upon Oath of the Merchant or his Factor, they stood them in at the first; and the general *Maxim* which limits all regal advantage upon trade of Merchants, is, *ut Causa honesta sit & necessario, ratio facilis, tempus idoneum.* *Merchants.*

3. *Farming out of Customs.*

So did *Edward* 3. with the new and old Customs at *London* for 1000 Marks monthly to be paid unto the Wardrobe. The like he did *anno* 17. *Clau. anno.* 5. *Edw.* 3. *Original.* 17. *Ed.* 3. *Rot.* 2.

Richard 2. *anno* 20. letteth out for term of life Subsidy of Cloth in divers Countries.

And *Edward* 4. *anno* 1. the Subsidy and usage of Cloth.

Thus did *Henry* 8. with his Customs, and since his time, the late Queen, and our now Soveraign Master; and it was so then in use in the best governed State *Rome*, which let out portions and *decim's* to the *Publicans*.

KIngs raise money, and improve the Revenues of the Crown.

By

By Regalities; { 1. Temporal, as for Or, 2. Mixt. } { Liberties. Penalties of Laws, Letters of Favour.

Liberties.

In granting, restraining or renewing *them.* It is a course usual, that Kings have raised in money by calling in question the Charters and Liberties of Corporations, Leets, Free-Warrens, and other Royalties.

Ex Rad. Cogshal. Thus did *Rich.* 1. proclaiming, *Quod omnes chartæ & confirmationes, quæ prioris sigilli impressione roboraverint, irritæ forent nisi posteriori sigillo roborentur.*

And *Henry* 3. *anno* 10. enjoyned all *qui suis volebant Libertatibus gaudere, ut innovarent chartas suas de novo Regis sigillo,* getting money thereby.

Rot. Ragman. an. 7. *Edw.* 7. *Rot.* Quo warranto 8. *Ed.* 3. *Edward* 1. by divers Commissions with Articles (called *Articuli de Ragman*) annexed to them, called in *question* about *anno* 70. all the Liberties and Freedoms of *England*; *Gilbert de Thorneton* his Attorney putting information by *Quo warranto* against all persons, as well bodies Politick as others; whereby they were inforced anew to renew their Charters and Fines for their Liberties.

Rot. Warranto 13. *Edw.* 3. The like was in *anno* 13. *Edw.* 3. in whose time *an.* 9. all clauses of allowances by Charter of Amerciaments, Fines, *&c.* im-

imposed by the Kings Ministers upon any of the Tenants of other men were adjudged void, and the penalties made payable to the Kings Officers, unless they made a new purchase of their Liberties. And this was one of the usualest and easiest means to raise money from the people; because it lighteth only upon the best abilities. And if there were now but 20 *l.* taken of every Corporation; of every person that holdeth by Charter his Liberties 5 *l.* for renewing them: and of every one that claimeth by prescription 10 *l.* for purchase of a Charter, all which would be easie and acceptable, it would amount to above 100000 *l.*

For penal Laws that have been some times but with ill success wrought upon,

When *Richard* 2. *anno* 22. began this course, appointing in all his Commissions and instructions, *Bushey* only to be of the *Quorum* for compounding with the Delinquents it wrought in the affection of his People such distaste, that it grew the death of the one, and deposition of the other. *Instructio original. 22. Rich. 2.*

No less fatal was the like to *Empson*: and there is no string will sooner jar in the Common-wealth then this, if it be gennrally touched. *Process con. Dudley an. 1. Hen. 8.*

For letters of Favours.

Either for mitigation or dispatch of Justice.

Of

Of the first sort there be many found in *Hen.* 6. and *Edw.* 4. time, sometimes of protection, although by course of the Common Law none are warrantable but to such as are going in *obsequium Regis*, or *ibidem moraturi*, sometimes freeing men from Arrests by calling them up to appear before the Kings Council: Sometimes in causes highly criminal relieving the Prisoner, in commanding the Judges to make stay of all proceeding upon supposal of indirect practices until the King was better informed.

Of the second sort there are many in *Henry* 7. time, where the King hath taken money for writing to the Judges of Assize his Letters of Favour.

Lib. aquitanc. inter Hen. 7. & Dudley.

For Offices.

Thus did King *John* with the Chancellor-ship, selling it for time of life to *Gray* for 5000 Marks: divers offices now in the gift of the Master of the Rolls were engaged to the Chancellor and Treasurer of *England*, as are to be found in Record of *Henry* 4 and *Hen.* 5. and *Henry* 6. to be passed by warrant of the Kings hand, and upon some consideration. And *Henry* 7. renewed this course, using *Dudley* as his instrument to compound with Suitors of those and any other places.

And by that Record we find the Chancellor, the Chief Justice, the Keepers of most of the Records, the Clerks of the Assizes

Assizes and Peace, the Masters of his Game and Parks, and what else carrying either profits or reputation, paid to the King some proportion of *money* for their places. Neither is this different from the course of other States. For in *France Lewis* 12. called the Father of his Country, did so with all Offices not being of *Judicature*, which his Successors did not forbear. In *Spain* it is usual, and *Vasque* the *Spanish* Advocate defendeth the lawfulness of it: And *Charls* the fifth prescribeth it to his Son, as a rule in his last instruction, drawing his ground of reason and conveniency from the example and practice of the *See* at *Rome*. The like might be of all inferiour promotions that are or may be in the Kings gift, whether Ecclesiastical or Temporal, if they were after the true value in profit and reputation listed into ranks, according to the several natures of their imployments respectively.

Emilius in vita Lewis 12.

Vas. cap. 40. *et instructione Caroli* 5. *to Phil.* 2.

For Honours.

And that either by Power legal or Election.

Of the first it is only in respect of Land, whereby every man is to fine when the King shall require, that hath ability to be made a Knight, and is not; of this sort there be plenty of Examples.

The other out of choice and Grace, as *Hugo de Putiaco* Bp. of *Durham*, was by

King *Rich.* 1. created Earl of *Northumberland* for a great sum of money: And I doubt not but many of these times would set their ambition at as high a price. And for his Majesty now to make a degree of honour hereditary, as Baronets, next under Barons, and grant them in tail, taking of every one 1000 *l.* in fine, it would raise with ease 100000 *l.* and by a judicious election be a means to content those worthy persons in the Common-wealth, that by the confused admission of many Knights of the *Bath* held themselves all this time disgraced."

For the Coin and Bullion.

By which, although some Kings out of a last shift, have seemed to relieve themselves, yet was it in truth full of *danger* and distrust to the Common-wealth; being an assured token of a bankrupt state: and to the Prince in conclusion, of most disadvantage. For the Revenues of the Crown being commonly in certain Rents, they must in true value, howsoever in verbal sound, be abated to the proportion that the Money shall be abased. And every man will rate his Commodity in Sale, not according to the accompt of pence or pounds, but to the weight of pure Silver contained in the currant money. As for example, That which was before the decrying of the Coin worth 5 shillings, the pound weight,

weight, will (if the allay be to the half) be held at ten shillings; and so in every proportion respectively. For money is not meerly to be esteemed in respect of the Sculpture or Figure; but it must value *in pecunia quantum in massa*: And Silver is a Commodity as other Wares, and therefore holdeth his estimation as they do according to the goodness. And the Lord Treasurer *Burleigh* in *Anno* 1561. when the currant of State-Council affected an abasement of Coin, after a grave deliberation advised the Queen from it, and never would give way to any such resolution in his time. But that benefit which truly the King might more make of Bullion than now he doth, is to erect again *Cambium Regis* his own exchange. An office as antient as before *Hen.* 3. and so continued unto the middle of *Hen.* 8. the profit of it being now ingrossed among a few Gold-smiths, and would yield above 10000 *l.* a year, if it were heedfully regarded, and then should the King himself keep his Mint in continual work, and not stand at the devotion of others to supply *Bullion*, and should never want the materials, if two things were observed: The one to permit all men bringing in *Bullion*, to trade outward the value thereof in domestick Commodities at an abated Custom.

The other to abate the mighty indraught of forreign manufactures, and

unneceſſary Wares, that the outward trade might over-ballance the inward, which otherwiſe will (as it hath done) draw on this deſperate conſumption of the Common-wealth: Which *anno* 27. *Edw.* 3. was otherwiſe, for then the *Exitus* exceeded the *Introitus* by far, and in the laſt times of the late Queen, as in *anno* 1573. For at this time the unmeaſurable uſe of luxurious Commodities was brought in (as Wines, Spices, Silk, and fine Linnens, *&c.*) for of the latter ſort of above ten groats the Ell, there is above 360000 *l.* yearly ſpent, which is half the value of our cloaths tranſported, maketh the State to buy more than they do ſell, whereas a good Father of a Family ought to be *vendacem* and not *emacem*. Beſides the condition of our *People* is now ſuch, that the greater part neither get nor ſave, which in a private houſe is an apparent argument of ruining, and muſt be no leſs in a Common-wealth. And it is obſerved generally, that hence the want of Bullion now is ſuch, that there is not money in *Specie* ſufficient to pay the lenders their principal, ſo that uſury is paid for money upon ſuppoſition, and not really.

Ex Scacar. inter rememb. Regis. 27. *Ed.* 3.

If then his Majeſty ſhall be pleaſed by advice of his Council, to advantage himſelf any otherwiſe by *coinage*, it will be ſafer to do it upon a ſimple mettal, then by any implyant or better ſute, which well

well governed States both modern and antient used: For *Rome* in her increase and greatest pitch of glory had their money *ære, argento, auro puto puro*, and so have all the *Monarchies* absolute at this day in Christendom. And I believe it may be wrought to his Majesty of good value, and to the State of much ease, if it may be put in practice with discreet caution and constant resolution; for the danger only may be in the venting of the quantity, which may clog the State with useless money, or extension of the example, which may work in by degrees an embasement of Bullion.

The proportion that I would hold beneficial and safe, should be in the Mass, at first 120000 *l.* by which his Majesty should gain 10000 clearly: the increase annual 12000 *l.* in which his Majesty should gain 1000. And the limitation, that none be enforced to take any but in sums under 20 *s.* and then but the twentieth part proportionably.

Against this some may object, that it will either not advantage the King so much as is projected, either from the difficulty in venting, or facility in Counterfeiting, or else prejudice the estate with a worthless money.

The benefit to the King will easily fall out, if he restrain Retailers of victual and small Wares from using their own tokens, for in and about *London*, there

are above 3000. that one with another cost yearly 5 *l.* apiece of leaden Tokens, whereof the tenth remaineth not to them at the years end, and when they renew their store, which amounteth to above 15000 *l.* And all the rest of this Realm cannot be inferiour to the City in proportion. And the form and figure may with an Engine so subtilly be milled, that the charge will prevent all practice of false play.

For the prejudice since *London*, which is not the 24. part of the People of the Kingdom, had in it found above 800000. by a late inquiry by order of the late Queen, and so falleth out to be 2 *d.* a person, in the intire state it may nothing, either of loss by the first uttering being so easie, nor burthen any with too great a Mass at a time, since continual use will disperse so small a quantity into so many hands. But on the other side will be to the meaner sort (except the Retailers that made as much advantage formerly of their own Tokens, as the King shall now) of necessary use and benefit: For the buyers hereafter shall not be tyed to one Seller, and his bad Commodities, as they are still, when his Tokens, hereafter made currant by Authority, shall leave him the choice of any other Chapman; and to the Poor in this time of small charity, it will be of much relief; since men are like to give

a far-

a farthing Alms, that will not part with a greater sum.

Besides, it cannot but prevent much waste of Silver, that is by the minting pence and half pence occasioned, there will be no cause hereafter to cut any Bulloin into proportion so apt for loss: what that hath been may be conjectured, if we mark but of the great quantities from the penny downward since *Hen.* 8. time stamped, how few remain; whereas of all the Coins from three pence upward which are manual, plenty pass still in daily payment.

Regalities mixt.

As for restitution of the temporalities of Abbots and Bishops.

For which *Hen.*7. received great sums.

Corrodies in Cathedral Churches.

And having in every Cathedral and Collegiate Church, as incident to his Crown a Corrodary, made money of it at the highest rate he could.

Vacancy of Bishopricks.

The benefit at the vacancy of any Bishop some Kings have used to their best advantage, making a circular remove of as many as in reputation and profit was inferiour to the place void.

Concurrent Jurisdiction as the Pope had in former times.

Besides, there are two of no mean commodity.

The one is grounded upon a concurrent Jurisdiction with every Ordinary in the Diocess, which the King by having the power *Papal* in that point invested in him by Act of Parliament, may exercise by his Commission, or otherwise remit to the Ordinary for some valuable respect.

Ex composit. original. inter Card. Wolsey, *& Archiep. Cant. dated* 14. *Hen.* 8.

Thus did Cardinal *Wolsey* with *Warham* the Arch-bishop, and all other the Bishops of the Kingdom, after he had got his Legative power. And this if it were put in practice would draw to the King 20000 *l.* in his Coffers.

Tenths of the Church-Lands now in the Laity.

The other is the short account yielded the King of such Ecclesiastical tenths and duties, as were often or Annually paid unto the Pope in former times, and now by Statute invested in the Crown: for in former times the *See* of *Rome* received them not, as only out of the meer Spiritualities, but also from out of all the Temporalities of Spiritual persons; which Land being now divided from the Church into the hands of the Laity; yet ought they to pay this duty, since they were settled in the Crown by a former Law, and no subsequent ever hath discharged them.

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AN ANSWER TO CERTAIN ARGUMENTS RAISED FROM Supposed Antiquity

And urged by some MEMBERS of the Lower HOUSE of

PARLIAMENT;

To prove that

Ecclesiastical Laws.

Ought to be Enacted by

Temporal Men.

Written by Sir *Robert Cotten*, Knight and Baronet.

LONDON,
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AN ANSWER TO CERTAIN ARGUMENTS RAISED FROM Supposed Antiquity, And urged by some Members of the Lower House of PARLIAMENT, To prove that Ecclesiastical Laws Ought to be Enacted by Temporal Men.

WHat, besides self-regard, or siding faction, hath been the main reason of the lower *Lay-house* labour in Parliament, to deal with Laws of the Church, the milder Members have yielded a Right which they would maintain by former precedents, raising the same from

1. Primitive use.
2. Middle practice.
3. Uninterrupted continuance. Pro-

3. Reasons out of Precedent.

1. *Imperial constitutions.*
2. *Saxon Laws.*
3. *Acts in Parliament.*

Professing the same by the Laws of
1. The *Roman Empire.*
2. The *Saxon Kings.*
3. The *English Parliaments* so to do.

Whince since it may raise a prejudice to the Church's peace, or to the Soveraign's power, unopposed; I will make way (in a word or two) to the better answer of some other Pen. What they say is not to be denied, that in course of civil Laws under the Christian Emperours, there be often constitutions Ecclesiastical; and in the Counclis of the Church (frequent) the Sovereign's power, and sometimes the presence of lay-Ministers; yet may their assertion admit to the first this answer of *Justinian*; *Principes, Sapientes, Episcoporum monita, pro fide & Religione Christiana, Leges Synodicis Canonibus conformes edidere, recte judicantes, Sacerdotum Sanctiones merito Majestatis Regiæ nutu roborari.* So that those decrees of the Civil Laws will prove but confirmatives of former *Canons*, as may be gathered by that of *Valentinian* and *Martian*, Emperours, who wrote unto *Paladius*, their *Præfectus Prætorii*, that all constitutions that were against the *Canon* of the Church should stand void. And to the second, that their presence was to dignifie, and not to dispute; the direction proveth, that the Emperor *Theodosius* gave to *Candidianus* an Earl, by him to the *Ephesian* Coun-

Justinian.

Tripartita Historia.

Distinct. 196. 1.

Counsel sent; *Non ut Quæstiones seu Expositiones communicaret, cum sit illicitum, quia non fit in ordine sanctissimorum Episcoporum, Ecclesiasticis tractatibus intermisceri.* And *Valentinian* the elder, though Petitioned by the Bishops to be present at their Synod, said, *Sibi, qui unus è Laicorum numero esset, non licere hujusmodi negotiis se interponere.* And by the Council of *Carth.* and *African*, likewise it appeared, that even Princes would intermeddle with these matters; but *Sæpius rogati ab Episcopis.* And the Emperor *Gratian* taught, as *Zozimus* saith, *Omnes Laicos nihil potestatis in res Ecclesiasticas posse sibi vindicare.* And the former *Emperor* Enacted, *In causa Ecclesiastici alicujus ordinis eum judicare debere, qui nec manere impar est, nec jure dissimilis, Sacerdotes de Sacerdotibus judicare.* According to that saying of *Constantine* the Great; *Vos enim a Deo nobis dati estis Dii, & conveniens non est ut homo judicet Deos.* Thus then stood the practice of the primitive Church; which when it was in those times otherwise, as under *Constantius* the *Arrian*, *Athanasius* saith of him; *Hæreseos veneno imbutos milites, Sicarios, Eunuchos Comites, faciebat Sacerd. Judices, & cogebat umbratiles Synodos, quibus ipse cum monstris illis præsideret.* Whereas otherwise the Emperors, even in the height of *Pagan* Greatness, ascribed to their *Pontifices* and *Sacerdotes* in Common

Nicep. lib. 11.

Con-cil. { *Carth.* *Affric:*

Zozimus.

Ambros l. 5. Ep. 32.

Ruffinus Eccles. hist. l. 1.

Athan. Epist. ad solit. vitam. agent.

Dionysius Halicarn.

mon Right, *Propter Religionem comitia habere propria*, and that *Stabili Sententiâ ratum erat, quod tres Pontifices communi decreto statuissent.*

The second Objection. Ecclesiastical Laws enacted in Parliament.

To the second, as it is in the former true, that many Canons in the Church are interlaced with the Common-wealths, although the *Saxon* Laws, and that the establishment should be by Parliament, which they infer out of the *Frontispian*, of *Inas* Statutes in these words, *Ego Inæ Rex, ex tractatione Episcoporum, & omnium Aldermannorum meorum, & seniorum sapientum Regni mei, & confirmatione Populi mei*; do ordain, *&c.* Yet may receive this answer. First, that the Commons did but confirm and not dispute; which to this day is in their summons comprized only *ad consuetudinem.* But whosoever shall collate the transcript copy with the original, called *Textus Roffensis*, will find these ordinances, not called *Leges* but *Synodalia*, and almost all by the King and Church-men onely made. Neither was it new in this Isle that Priests directed alone the government, when as the best Record of our eldest memory saith, that the *Druides*, (a religious *Pagan* order) not only *divinis intersunt*, *Religi-*

Saxon Laws.

Leges Inæ.

Textus Roffensis

Religiones interpretantur, but *de omnibus* (as *Cæsar* saith) *controversiis publicis privatisque constituunt, sive de hæreditamento, sive de finibus, & præmia & pœnas constituunt.* And if any, *sive privatus, aut populus decreto eorum non steterit, sacrificiis interdicunt.* And this *excommunication* amongst them, was *pœna gravissima.* Neither did the times of Christianity here bereave the Church of all such will. For in the *Saxon* time they intermedled in the framing of the Temporal Laws, and ought, as appeareth by an Ordinance of that time *de Officiis Episcopi: Cum seculi judicibus interesse ne permittent si possint, ut illinc aliqua pravitatum germina pullulaverint.* And surely, since these times until of late, the inferiour Ministers of the Church, as well as Bishops, had suffrage in Parliament. For *John de Rupescissa* (a story as old as King *John*'s time) saith, *Anno* 1210. *Convocatum est Parliamentum Londoniæ, Præsidente Archiepiscopo cum toto Clero, & tota secta Laicali.* And in the 8. of *Edw.* the 3. the Members of Parliament defective in their appearance, the King chargeth the Arch-bishop to punish the defaults of the Clergy, as he would the like touching the Lords and Commons. And the third of *Richard* the Second, against a Petition in Parliament contradicting Provisions, the Prelates and whole Clergy make their protestations;

Leges Regum Saxonum.

Eulogium.

All the Clergy members of Parliament proved by Record.

Rot. Parl. 18. *Edw.* 3.

Rot. Parl. an. 3. *Rich.* 2.

And

And to a demand of the Lay-Commons, for the King's aid the year following, the whole Clergy answered, that they used not to grant any but of their free will. And in the eleventh of the same King, the Arch-bishop of *Canterbury* made openly in Parliament a solemn protestation for himself, and the whole Clergy of his Province, entered by word; the effect whereof was, That albeit they might lawfully be present in all Parliaments, yet for that in that Parliament matters of treason were to be intreated of, whereas by the Canon Law they ought not to be present, they therefore absented themselves, saving their liberties therein otherwise.

Rot. Parl. an. 4. Rich. 2.

Rot. Parl. an. 11. Ri. 2. 11. 9.

And in the 21. of *Richard* the 2. for that divers judgments were heretofore undone; for that the Clergy were not present: the Commons prayed the King, that the Clergy would appoint some to be their common Proctor, with sufficient authority thereunto. The Bishops and Clergy therefore being severally examined, appointed Sir *Thomas Piercy* their Proctor to assent, as by their Instruments appeareth.

Rot. Parl. an. 21. Rich. 2. n. 9. & 10.

And the same year, upon the device of Sir *Thomas Bussey* most of the Bishops and Lords were sworn before the King again, upon the Cross of *Canterbury*, to repeal nothing in this year enacted. So did sundry the Protectors of the Clergy, and

Rot. Parl. an. 21. Rich. 2. n. 51.

and most of the Commons, by holding up one of their hands, affirmed that they the same would do.

In the judgment of the Duke of *Norfolk*, and Earl of *Warwick* the same year, the name and assent of the Procurator of the Clergy alledged. And in the first of *Henry* 4. the Bishop of *Assaph*, for Arch-bishop and Bishops; the Abbot of *Glassenbury*, for all Religious Persons, the Earl of *Gloucester*, for Dukes and Earls; the Lord of *Barkley*, for Barons and Baronets; Sir *Thomas Irpingham* Chamberlain, for Batchelors and Commons of the South; Sir *Thomas Gray*, for Batchelors and Commons of the North; Sir *William Thirming*, and *John Mekham* Justices, for the whole Estates, came to the Tower to King *Richard*, to whom Sir *William Thirming*, for and in the name of them all, pronounced the sentence of deposition, and the words or resignation of homage and loyalty.

2. Ric. 2. n. 56.

1. Hen. 4.

And when it was enacted *anno 6. Henry 6.* by the King, Lords Temporal and Commons, that no man should contract or marry himself to any Queen of *England*, without the special licence and assent of the King, on pain to lose all his Goods and Lands; The Bishops and all the Clergy to this Bill assented, so far as it was not against the Law of God. And thus far for answer to the second part.

Rot. Parl. an. 6. Hen. 6. n. 27.

The third Reason. Ecclesiastical Laws Enacted in Parliament.

The last, which they granted from Precedents, Parliaments since the Conquest, they infer out of the Phrase, and out of the practice; The first by these words; *Rex Wintoniæ celebravit magnum Concilium coram Episcopis, Comitibus, & Baronibus*, mistaking the word, as intending a Provincial Synod, whereas it was in those days equal and usual for their Parliament, that *French* Phrase never having admission in that sence here until the time of *Henry* 2. and then but rarely. That great assembly being formerly instiled *Magnum Consilium*; and until of late often enjoyed the same name. And this is evident out of the words of *Benedictus Abbas*, in the life he wrote of the 2. *Henry*; *Circa festum sancti Pauli, venit Dominus Rex usque Northampton, & magnum ibi celebravit Consilium de Statutis Regni sui coram Episcopis, Comitibus, Baronibus terræ suæ, & per Consilium Militum & hominum suorum.* Here the intent manifesteth the nature of that assembly, and the fuller, in that the same Author in the same year, saith, that *Richardus Cantuar. Archiepiscopus*, and *Rogerus Eboracensis cum Suffraganeis suis congregatis apud Westmonasterium in Capella Monachorum infirmorum tenuerunt Consi-*

William Malmesbury.

Lib. Ecclesiæ Cantuar.

Vita Hen. 2.

Consilium; or their convocation, which had been needless if in their first, they might have done their Church-affairs.

Here might I enter into a large and just discourse, as well of the Authority as Antiquity of their Convocation or Synod Provincial, no less antient, as *Beda* mentioneth, than in the year 686. when *Austin adjutorio Regis*, &c. assembled in Council the *Brittain* Bishops; from which, unto this day, there is successive Record of Councils or Convocations, less interrupted than of Parliament.

Beda.

Provincial Constitutions.

Practice.

Now touching our practice to ordain in Parliaments Laws Ecclesiastical, either meer or mixt, although it be by Record evident, yet must it admit this difference: First, that it sprung not from our dispute or desire, but solely from the Petitions of the Church, as usual is in all the Rolls of Parliament, receiving their distinct Title from those of the Commons. And this they did to add *Seculare Brachium* to their former Canons, too weak to reach to corporal punishments; as in the fifth of *Rich.* 2. when to suppress the Schisms, the Clergy became in Parliament the Petitioners to the Kings Laity; where these words of their assistance are, excluding

Rot. Parl.

Claus. 5. Rich. 2.

the Commons from any power of advice: *Habita prius bona & matura deliberatione de communi Consilio ipsius Archiepiscopi, Suffraganeorum suorum, aliorumque Clericorum, super quo idem Archiepiscopus supplicavit, ut pro debita castigatione illorum qui conclusiones Schismaticas prædicare voluerint, animo obstinato dignarentur apponere brachium Regiæ potestatis eidem.* And this aid was in order in the Conquerors time; who by edict commanded that every Marshal, *Episcopo & Deo faceret rectum secundum Canones & Episcopales leges.* Which if he doth not, after excommunication, *Fortitudo & Justitia Regis adhibeatur.* And this even in the Primitive Church, was thought convenient: because as Saint *Ambrose* saith, for the like intent, to the Emperor *Valentinian*; *Non tantas vires sermo meus habiturus est pro Trinitate bellum gerens, quantum edictum tuum.* Hence it is that at this day the King's Authority is annexed ever to the Convocation; as in the antient Church were the like degrees of Kins; as those of *Eruigius* ratifying the twelfth Council of *Toledo*. *Nemo illiciator vel contemptor vigorem his Institutionibus subtrahat, sed generaliter per cunctas Regni nostri provincias hæc Canonum instituta nostræ gloriæ temporibus acta, & autoritatis debitæ fastigia præpollebunt, & irrevocabili judiciorum exercitio prout constituta sunt in omnibus*

Charæ antiquæ B. B.

Ambrosius.

Concil. 11. *Toletan.*

omnibus Regni nostri Provinciis celebres habebuntur. Si quis autem hæc instituta contemnat, contemptor se noverit damnari sententia; id est, ut juxta voluntatem nostræ gloriæ, & excommunicatus à nostro cœtu resiliat; & insuper decimam partem facultatis suæ fisci partibus sociandam, amittat. But that the Church-laws ever moved from the Lay-members, I take it as far from Precedent, as it is beside the nature of their Commission: The Bishops and Clergy being only called in the Writ to that service, the word being, to come *in fide & delectione, ad declarandum Consilium & avisamentum, & ad consentiendum iis quæ tunc de avisamento & assensu Cleri nostri* (and not the Commons) *contigerit affirmari.* But if any shall object unto me, that many Laws as that of the Supremacy in *Hen.* 8. time, had first the ground in Parliament; it is manifested, by the dates of their Acts in convocations, that they all had properly in that place the first original. And that this was the use of old, nothing will leave it so clear, as to observe the fruitless success of the Laity, in all their endeavours to establish Ecclesiastical Laws; And this I will manifest by the Kings answer out of Record, so far as the Rolls of Parliament will admit me, successively. Until the 11 of *Edward* the first, there is no Record extant; but in that the Commons petition to the King, that a Law may be

Ad consentiendum. Writ of summons, Rot. claus. an. 22. Rich. 2. m. 7.

Archivis Archiepis.

Rot. Parl. 18. Edw. 1.

Usury.

Vexation by Ordinaries.

made against Usurers; The King gave answer, that it must be remedied, *coram Ordinariis*. And when they desired remedy, *de multimodis injustis vexationibus eis factis per Officiales & alios ministros Ecclesiæ*; The King replied, *Cancellarius emendat in temporalibus; Archiepiscopus faciat in spiritualibus*. From hence there is a lack of Record near to the 8 of *Edward* 3. In which Parliament the Commons desire an Act to restrain the Clergy in their trivial citations; whereunto they received from the King but this answer only; That the King will charge the Bishops to see it remedied. And the first of *Richard* the 2. preferring the like petition against corruption of Ordinaries, to do according to the Laws of the Holy Church. And in the fifth of the same King, they complain against abuses in Ecclesiastical Courts. *Respons.* The King will charge the Clergy to amend the same.

Rot. Parl. 8. *Edw.* 3.

Citations.

Rot. Parl. an. 1. *Rich.* 2.

Pecuniary pains.

5 *Rich.* 2.

Ecclesiastical Courts.

And in the 15 year, when they required an Act to declare the age of the tithable Wood; they had for answer, The King would move the Bishops for order between this and the next Parliament.

Tythes.

17. *Rich.* 2 n. 43.

And in the 17 of *Rich.* 2. when they petitioned for a residing learned Ministry, so as the Flock for want might not perish; they had replied, That the King willeth the Bishops to whom that Office belongeth, to do their duties.

Learned Ministry.

Henry

Henry the 4. in his second year, desired by the Lords and Commons to pacifie the Schism of the Church; Answereth, he will charge the Bishops to consider the same. And in his fourth year, being importuned for an Act for residency of Ministers; replyed *Le Roy command au Prelats & perentre cy ils en purvoient de remedie.* And in the eleventh of the same King, to the like petition; *Respons. Ceste matiere appartient a* St. *Eglise & remede en la darraine Convocation.*

Rot. Parl. an. 2. Hen. 4. n. 44.

4. Hen. 4.

11. Hen. 4.

In Parliament under the 5 *Henry* and his first year, the King answereth the Commons Petition, against oppressing Ordinaries; If the Bishops do not redress the same, the King will.

Rot. Par. an. 1. Hen. 5.

And in *Anno* 3. *Henry* 6. to a Petition that Non-Residents should forfeit the profit of their living; gave answer, that he had delivered the Bill to my Lord of *Canterbury*, and semblably to my Lord of *York*; charging them to purvey means of remedy.

Rot. Parl. an. 3. Hen. 6.

And in the year following, to a Petition that Patrons may present upon *Non-Residency*; *Respons.* There is remedy sufficient in the Law spiritual.

Rot. Parl. an. 4. Hen. 1.

Since then it is plain by these rehearsed answers, that from the Conquest, they have received but weak admittance: And by the edict of the first King *William* in these words, a sharp restraint; *Defendo & mea authoritate interdico, ne*

Chartæ Antiquæ B.B.

THE ARGUMENT Made by the COMMAND Of the House of COMMONS (Out of the Acts of Parliament, and Authority of Law, expounding the same) at a Conference with the LORDS, Concerning the Liberty of the person of every FREEMAN.

My Lords,

UPON the occasions delivered by the Gentlemen, your Lordships have heard, the Commons have taken into their serious consideration the matter of the personal liberty: and after long debate thereof on divers

vers days, as well by ſolemn Arguments as ſingle propoſitions of doubts and anſwers, to the end no ſcruples might remain in any mans breaſt unſatisfied; They have upon a full ſearch and clear underſtanding of all things pertinent to the queſtion, unanimouſly declared, That no Freeman ought to be committed, or detained in Priſon, or otherwiſe reſtrained by the command of the King, or the Privy Council, or any other, unleſs ſome cauſe of the committment, deteinor, or reſtraint be expreſſed, for which by Law he ought to be committed, detained or reſtrained: And they have ſent me with other of their Members to repreſent unto your Lordſhips the true grounds of ſuch their reſolution, and have charged me particularly (leaving the reaſons of Law and Precedents for others) to give your Lordſhips ſatisfaction, that this Liberty is eſtabliſhed and confirmed by the whole State, the King, the Lords Spiritual and Temporal, and the Commons, by ſeveral Acts of Parliament, the authority whereof is ſo great that it can receive no anſwer, ſave by interpretation or repeal by future Statutes: And thoſe that I ſhall mind your Lordſhips of, are ſo direct to the point, that they can bear no other expoſition at all; and ſure I am, they are ſtill in force.

The firſt of them is the grand Charter of the Liberties of *England*; firſt granted

ted 17. *Johannis Regis*, and revived 9 *Hen.* 3. and since confirmed in *Parliament* above 30. times. The words are these, *cap.* 29. *Nullus liber homi capiatur vel imprisonetur, aut disseisetur de libero tenemento suo, vel Libertatibus, vel liberis consuetudinibus suis, aut utlagetur, aut exuletur, aut aliquo modo destruatur: nec super eum ibimus, nec super eum mittemus, nisi per legale judicium parium suorum, vel per legem terræ.* The words *Nullus liber homo*, &c. are express enough. Yet it is remarkable that *Matthew Paris* (an Author of special credit) doth observe *fol.* 432. that the Charter 9. *Hen.* 3. was the very same as that of the 17. of King *John* (*in nullo dissimilis* are his words) and that of King *John* he setteth down *verbatim*, *fol.* 342. And there the words are directly, *Nec eum in carcerem mittemus*: and such a corruption as is now in the point might easily happen betwixt 9. *Hen.* 3. and 28. *Edw.* 1. when this Charter was first exemplified: but certainly, there is sufficient left in that which is extant to decide this question: for the words are, that no Freeman shall be taken or imprisoned but by the lawful judgment of his *Peers*; (which is by Jury; *Peers* for *Peers*, ordinary Jurys for other, who are their *Peers*) or by the Law of the Land: Which Law of the Land must of necessity be understood to be of this notion, to be by due

pro-

proceſs of the Law; and not the Law of the land generally: otherwiſe it would comprehend Bond-men (whom we call Villains) who are excluded by the word *liber:* For the general Law of the Land doth allow their Lords to impriſon them at their pleaſure without cauſe, wherein they only differ from the Freeman, in reſpect of their perſons, who cannot be impriſoned without a cauſe. And that this is the true underſtanding of theſe words, *per legem terræ*, will more plainly appear by divers other Statutes that I ſhall uſe, which do expound the ſame accordingly. And though the words of this grand Charter be ſpoken in the third perſon; yet they are not to be underſtood of ſuits betwixt party and party; at leaſt not of them alone, but even of the Kings ſuits againſt his Subjects, as will appear by the occaſion of the getting of that Charter; which was by reaſon of the differences between thoſe Kings and their People; and therefore properly to be applyed unto their power over them, and not to ordinary queſtions betwixt Subject and Subject.

Secondly, The words *per legale judicium parium ſuorum* immediately preceeding the other of *per legem terræ*, are meant of tryals at the Kings ſuit, and not at the proſecution of a Subject. And therefore if a *Peer* of the Realm be arraigned

raigned at the Suit of the King upon an Indictment of murder, he shall be tryed by his *Peers*; that is by Nobles: but if he be appeached of murder by a Subject, his tryal shall be by an ordinary Jury of 12 Freeholders, as appeareth in 10. *Edward* 4. 6. 33. *Hen.* 8. *Brooke title Tryals Stamf.* pleas of the Crown, *lib.* 3. *cap.* 1. *fol.* 152. And in 10. *Edw.*4. it is said, such is the meaning of *Magna Charta.* By the same reason therefore, as *per judicium parium suorum* extends to the Kings suit; so shall these words *per legem terræ.* And in 8. *Edw.* 3. *Rot. Parl. m.* 7. there is a Petition, that a Writ under the privy Seal went to the Guardian of the Great Seal, to cause Lands to be seized into the Kings hands; by force of which there went a Writ out of the Chancery to the Escheator, to seize against the form of the grand Charter, that the King or his Ministers shall out no man of Free-hold without reasonable Judgment, and the Party was restored to his Land; which sheweth the Statute did extend to the King. There was no invasion upon this personal Liberty until the time of K. *Edw.*3. which was soon resented by the Subject: For in 5. *Edw.* 3. *cap.* 9. it is ordained in these words: It is enacted, 'that no man from henceforth shall be attached by any accusation, nor fore-judged of Life or Limb, nor his Lands, Tenements,

Goods

Goods nor Chattels seized into the Kings hands against the form of the great Charter and the Law of the Land.

25. *Edw.3.cap.* 4. is more full; and doth expound the words of the grand Charter; and is thus: Whereas it is contained in the great Charter of the *Franchises* of *England*, that none shall be imprisoned, nor put out of his Freehold, nor of his Franchise nor free Custom, unless it be by the Law of the Land. It is accorded, assented and established, that from henceforth none shall be taken by Petition or Suggestion made to our Lord the King, or to his Council, unless it be by Indictment or Presentment of his good and lawful People of the same Neighbourhood where such deeds be done, in due manner, or by process made by Writs Original at the common Law, nor that none be put out of his Franchises nor of his Freeholds, unless he be due brought in answer, and forejudged of the same by the course of the Law; and if any thing be done against the same, it shall be redressed and holden for none.

Out of this Statute I observe, that what in *Magna Charta* and the Preamble of this Statute, is termed by the Law of the Land, is by the body of this act expounded, to be by Process made by Writ Original at the Common Law; which is a plain interpretation of the words,

words, Law of the Land, in the Grand *Charter*. And I note that this Law was made upon the Commitment of divers to the Tower, no man yet knoweth for what.

28. *Edw.* 3. *cap.* 3. is yet more direct; (this liberty being followed with fresh Suit by the Subject) where the words are not many, but very full and significant: That no man, of what Estate or condition soever he be, shal be put out of his Lands or Tenements, nor taken, nor imprisoned, nor disinherited, nor put to death, without he be brought in answer by due process of the Law. Here your Lordships see the usual words of the Law of the Land are rendered by due process of the Law.

36. *Edw.* 3. *Rot. Parl. n.* 9. amongst the Petitions of the Commons, one of them (being translated into *English* out of *French*) is thus. First, that the great Charter, and the Charter of the Forrest, and the other Statutes made in his time, and in the time of his Progenitors, for the profit of him and his Communalty, be well and firmly kept, and put in due execution, without putting disturbance, or making arrest contrary to them, by special command, or in other manner.

The Answer to the Petition, which makes it an Act of Parliament, is, Our Lord the King, by the assent of the Prelates, Dukes, Earls, Barons, and the Com-

munalty hath ordained and eſtabliſhed; that the ſaid Charters and Statutes be held and put in execution according to the ſaid Petition. It is obſervable that the Statutes were to be put in execution according to the ſaid Petition? which is, that no Arreſt ſhould be made contrary to the Statutes, by ſpecial command. This concludes the queſtion, and is of as great force as if it were Printed. For the Parliament-Roll is the true warrant of an Act, and many are omitted out of the Books that are extant.

35. *Edw.* 3. *Rot. Parl. n.* 20. explains it further. For there the Petition is: *Item*, as it is contained in the grand Charter and other Statutes, That no man be taken or impriſoned by ſpecial command without Indictment or other proceſs to be made by the Law upon them, as well of things done out of the Forreſt of the King, as for other things; That it would pleaſe our ſaid Lord to command thoſe to be delivered, that are ſo taken by ſpecial command, againſt the form of the Charters and Statutes aforeſaid.

The Anſwer is, The King is pleaſed, that if any man find himſelf grieved, that he come and make his complaint, and right ſhall be done unto him.

37. *Edw.* 3. *cap.* 18. agreeth in ſubſtance, when it ſaith, Though that it be contained in the great Charter, that no man be taken, nor impriſoned, nor put out

out of his Freehold, without proceſs of the Law: Nevertheleſs divers people make falſe Suggeſtions to the King himſelf; as well for malice or otherwiſe, whereof the King is often grieved, and divers of the Realm put in damage, against the form of the ſaid Charter; wherefore it is ordained that all they which make ſuggeſtions, ſhall be ſent with the ſame ſuggeſtions before the Chancellor, Treaſurer, and his grand Council; and that they there find Surety to purſue their ſuggeſtions: and incur the ſame pain that the other ſhould have had if he were attainted, in caſe that his ſuggeſtion be found evil; and that then proceſs of the Law be made againſt them, without being taken and impriſoned againſt the form of the Charter, and other Statutes. Here the Law of the Land in the grand Charter is explained to be without proceſs of the Law.

42. *Edw.* 3. at the requeſt of the Commons by their Petitions put forth in this Parliament, to eſchew miſchief and dammage done to divers of the Commons by falſe Accuſers, which oftentimes have made their accuſation more for revenge and ſingular benefit, than for the profit of the King or of his People; which accuſed perſons, ſome have been taken and ſometime cauſed to come before the Kings Council, by Writ or otherwiſe, upon grievous pains againſt

the Law, it is assented and recorded for the good governance of the Commons, that no man be put to answer without presentment before Justices, or matter of Record, or by due process and Writ original, according to the old Law of the Land: and if any thing from henceforth be done to the contrary, it shall be void in the Law, and holden for Error.

But this is better in the Parliament-Roll, where the Petition and Answer (which make the Act) are set down at large 32. *Edward* 3. *Rot. Parl. n.* 12. The Petition. *Item*, because that many of the Commons are hurt and destroyed by false Accusers, who make their Accusations more for their revenge and particular gain, than for the profit of the King or his People: And those that are accused by them, some have been taken, and others are made to come before the King's Council, by Writ or other Command of the King, upon grievous pains, contrary to the Law. That it would please our Lord the King, and his good Council, for the just Government of his People, to ordain, that if hereafter any Accuser purpose any matter for the profit of the King, that the matter be sent to the Justices of the one Bench or the other, or the Assizes, to be enquired and determined according to the Law; and if it concern the

Accu-

Accuser or Party, that he take his Suit at the Common Law, and that no man be put to answer, without presentment before Justices, or matter of Record, or by due process and Original Writ, according to the antient Law of the Land; and if any thing henceforward be done to the contrary, that it be void in Law, and held for error. Here, by due process and original Writ, according to the antient Law of the Land, is meant the same thing as *per legem terræ* in *Magna Charta*. And the abuse was, that they were put to answer by the Commandment of the King. The King's answer is thus. Because that this Article is an Article of the Grand Charter: The King will that this be done as the Petition doth demand. By this appeareth that *per legem terræ* in *Magna Charta*, is meant by due process of the Law.

Thus your Lordships have heards Acts of Parliament in the point. But the Statute of *Westminster* the first *cap.* 15. is urged to disprove this opinion, where it is expresly said, that a man is not replevisable who is committed by command of the King. Therefore the command of the King without any cause shewed, is sufficient to commit a man to Prison. And because the strength of the Argument may appear, and the answer be better understood, I shall read the words

of that Statute, which are thus: And for as much as Sheriffs and others, which have taken and kept in Prison persons detected of Felony, and oftentimes have let out by Replevin, such as were not replevisable; because they would gain of the one party, and grieve the other. And for as much as before this time it was not certainly determined what persons were replevisable, and what not, but onely those that were taken for the death of a man, or by commandment of the King, or of his Justices, or for the Forrest; it is provided, and by the King commanded, that such Prisoners as before were out-lawed, and they which have abjured the Realm, Provers, and such as be taken with the manner, and those which have broke the Kings Prison, Thieves openly defamed and known, and such as be appealed by Provers, so long as the Provers be living, if they be not of good name, and such as be taken for burning of Houses feloniously done, or for false money, or for counterfeiting the Kings Seal, or Persons excommunicate, taken at the request of the Bishop, or for manifest offences, or for Treason touching the King himself, shall be in no wise replevisable, by the common Writ, or without Writ. But such as be Indicted by Larceny, by Inquests taken before Sheriffs or Bayliffs by their Office, or of light suspition, or for

petty

petty Larceny, that amounteth not above the value of 12 *d.* if they were not guilty of ſome other Larceny aforetime, or guilty of receipt of Fellons, or of commandment or force, or of aid in Felony done, or guilty of ſome other Treſpaſs, for which one ought not to loſe Life or Member; and a man appealed by a Prover; after the death of the Prover if he be no common Thief, nor defamed, ſhall from henceforth be let out by ſufficient Surety, whereof the Sheriff will be anſwerable, and that without giving ought of their Goods. And if the Sheriff or any other, let any go at large by Surety, that is not repleviſable; if he be the Sheriff, Conſtable, or any other Bayliff of Fee, which hath keeping of Priſons, and thereof be attained, he ſhall loſe his Fee and Office for ever. And if the Under-Sheriff, Conſtable or Bayliff of ſuch as hath Fee for keeping of Priſons, do it contrary to the will of his Lord, or any other Bayliff being not of Fee, they ſhall have three years Impriſonment, and make a Fine at the Kings pleaſure. And if any with-hold Priſoners repleviſable, after they have offered ſufficient Surety, he ſhall pay a grievous amerciament to the King; and if he take any Reward for the deliverance of ſuch, he ſhall pay double to the Priſoner, and alſo ſhall be in the great mercy of the King. The anſwer is, it muſt be acknowledged,

that a man taken by the command of the King is not replevisable, for so are the express words of this Statute, but this maketh nothing against the Declaration of the Commons; for they say not that the Sheriff may Replevin such a man by Surety, *scilicet Manucaptores*: but that he is bailable by the Kings Court of Justice: for the better apprehending whereof, it is to be known that there is a difference betwixt Replevisable, which is always by the Sheriff upon Pledges or Sureties given, and Bailable by a Court of Record, where the Prisoner is delivered to his Bail, and they are his Jailors, and may imprison him, and shall suffer for him body for body, as appeareth 33. and 36. *Edw.* 3. in the title of *Mainprise*, *plit.* 12, 13. where the difference betwixt Bail and *Mainprise* is expresly taken. And if the words of the Statute it self be observed, it will appear plainly that it extends to the Sheriffs and other inferiour Officers, and doth not bind the hand of the Judges. The Preamble, (which is the Key that openeth the entrance into the meaning of the Makers of the Law) is: Forasmuch as Sheriffs, and others, which have taken and kept in Prison persons detected of Felony. Out of these words I observe, that it nominateth Sheriffs: and then if the Justices should be included, they

they must be comprehended under the general word, *Others*; which doth not use to extend to those of an higher rank, but to inferiours: For the best, by all course is first to be named; and therefore if a man bring a writ of Customs and Services, and name Rents and other things, the general words shall not include Homage, which is a personal service, and of an higher nature; but it shall extend to ordinary annual Services, 31 *Edw.* 1. *droit* 67. So the Statute of 13 *Eliz. cap.* 10. which beginning with Colledges, Deans and Chapters, Parsons and Vicars, and concludes with these words, *and others* (*and others having spiritual promotions*) shall not comprehend Bishops, that are of an higher degree, as appeareth in the Arch-Bishop of *Canterbury* his Case reported by Sir *Edw. Cook lib.* 2. *fol.* 466. And thus much is explained in this very Statute, to the end when it doth enumerate those were meant by the word *other*, namely Undersheriffs, Constable, Bayliffs. Again, the words are; Sheriffs and others, which have taken and kept in Prison. Now every man knoweth, that Judges do neither arrest nor keep men in Prison; that is the office of Sheriffs and other inferior Ministers; therefore this Statute meant such only, and not Judges. The words are further, that they let out by replevin such as were not replevisable. This is the

proper

proper language for a Sheriff: Nay more expreſs afterwards, in the body of the Statute: That ſuch as are there mentioned, ſhall be in no wiſe repleviſable by the common Writ (which is *de homine replegiando*, and is directed to the Sheriff) nor without Writ (which is by the Sheriff, *Ex Officio.*) But that which receives no anſwer, is this: That the command of the Juſtices (who derive their authority from the Crown) is there equalled as to this purpoſe with the command of the King; and therefore by all reaſonable conſtruction, it muſt needs relate to Officers that are ſubordinate to both, as Sheriffs, Underſheriffs, Bayliffs, Conſtables, and the like: and it were an harſh expoſition to ſay, that the Juſtices might not diſcharge their own command; and yet that reaſon would conclude as much. And that this was meant of the Sheriffs and other Miniſters of Juſtice, appeareth by the Recital of 27 *Edw.* 3. *cap.* 3. and likewiſe by *Fleta*, a Manuſcript ſo called, becauſe the Author lay in the Fleet when he made the Book. For he *lib.* 2. *cap.* 52. in his Chapter of Turns, and the views of the hundred Courts in the Countrey, ſetteth down the Articles of the charges that are there to be enquired of; amongſt which, one of them is, *De replegialibus injuſte detentis & irreplegialibus dimiſſis*; which cannot be meant of not bailing by the Juſtices. For what have the

the *inferior Courts* of the Countrey to do with the Acts of the Justices? And to make it more plain, he setteth down in his Chapter (that concerns Sheriffs only), the very Statute of *West.* 1. *cap.* 15. which he translates *verbatim* out of the *French* into *Latin*, save that he renders, taken by the command of the Justices thus, *Per judicium Justitiariorum*, and his Preface to the Statute plainly sheweth that he understood it of Replevin by Sheriffs: for he saith, *Qui debent per plegios dimitti, qui non declaret hoc Statutum*; and *per plegios* is before the Sheriff. But for direct authority, it is the opinion of *Newton* Chief Justice, 22 *Henry* 6. 46. where his words are these: It cannot be intended but the Sheriff did suffer him to go at large by mainprise; for where one is taken by the Writ of the King, at the commandment of the King, he is replevisable; but in such Cases his Friends may come to the Justices for him if he be arrested, and purchase a *Supersedeas*. This Judg concludes, that the Sheriff cannot deliver him that is taken by the command of the King, for that he is irreplevisable, which are the very words of the Statute: but saith he, his Friends may come to the Justices, and purchase a *Supersedeas*. So he declares the very question, that the Sheriff had no power, but that the Justices had power to deliver him who is committed by the Kings com-

command, and both the antient and modern practice manifests as much. For he that is taken for the death of a man, or for the Forrest, is not replevisable by the Sheriff; yet they are ordinarily bailed by the Justices, and were by the Kings Writs directed to the Sheriffs in the times of *Edw.* 1. & *Edw.* 2. as it appears in the close Rolls, which could not be done if they were not bailable: and it is every days experience that the Justices of the Kings-Bench do bail for murder, and for offences done in the Forrest; which they could not do, if the word *Irrepleviſable* in *Weſtminſt.* 1. were meant of the Justices as well as the Sheriffs.

Object. 1. For the Authorities that have been offered to prove the contrary, they are in number three. The first is 21 *Edw.* 1. *Rot.* 2. in *Scrin.* which is also in the book of *Pleas* in the *Parliament* at the Tower *fol.* 44. It is not an Act of *Parliament*, but a Resolution in *Parliament*, upon an Action there brought, which was usual in those times. And the Case is, that *Stephen Rabab* Sheriff of the Counties of *Leicester* and *Warwick*, was questioned for that he had let at large, by Sureties, amongst others, one *William* the Son of *Walter le Persons*, against the will and command of the King, whereas the King had commanded him by Letters under his Privy Seal, that he should do no favour to any man, that was committed

mitted by the command of the Earl of *Warwick*, as that man was: Whereunto the Sheriff answered, that he did it at the request of some of the King's Houshold upon their Letters. And because the Sheriff did acknowledg the receipt of the King's Letters, thereupon he was committed to Prison, according to the form of the Statute.

To this I answer, that the Sheriff was justly punished, for that he is expresly bound by the Statute of *West.* 1. which was agreed from the beginning. But this is no proof that the Judges had not power to bail this man.

The next Authority is 33 *Hen.* 6. in the Court of Common Pleas, *fol.* 28. *b.* 29. where *Robert Poynings* Esq; was brought to the Bar upon a *Capias*, and it was returned, that he was committed *per duos de Concilio* (which is strongest against what I maintain) *pro diversis causis Regem tangentibus*. And he made an Attorney there in an Action: Whence it is inferred, that the Return was good, and the Party could not be delivered. *Object.* 2.

To this the answer is plain. First, no Opinion is delivered, in that Book, one way or other upon the Return, neither is there any testimony whether he were delivered or bailed, or not. *Resp.*

Secondly, it appears expresly that he was brought thither to be charged in an Action of Debt at another mans Suit, and no

no desire of his own to be delivered or bailed: and then, if he were remanded it is no way material to the question in hand.

Object. 3. But that which is most relyed upon, is the Opinion of *Stamford* in his book of the Pleas of the Crown *Lib.* 2. *cap.* 18. *fol.* 72, 73. in his Capter of *Mainprise*, where he reciteth the Chapter of *West.* 1. *cap.* 15. and then saith thus, By this Statute it appears, that in four Causes at the Common Law a man was not replevisable: to wit, those that were taken for the death of a man, by the command of the King, or of his Justices, or for the Forrest. Thus far he is most right. Then he goeth on and saith; As to the command of the King; that is understood of the command by his own mouth, or his Council, which is incorporated unto him and speak with his mouth; or otherwise every Writ of *Capias* to take a man (which is the Kings command) would be as much. And as to the command of the Justices, their absolute commandment; for if it be their ordinary commandment, he is replevisable by the Sheriff, if it be not in some of the Cases prohibited by the Statute.

The answer that I give unto this, is, that *Stamford* hath said nothing whether a man may be committed without cause by the Kings command, or whether the Judges might not bail him in such

ſuch Caſe; but only that ſuch an one is not repleviſable; which is agreed; for that belongs to the Sheriff: and becauſe no man ſhould think he meant any ſuch thing, he concludes his whole ſentence touching the command of the King and the Juſtices, that one committed by the Juſtices ordinary command is repleviſable by the Sheriff; So either he meant all by the Sheriff; or at leaſt it appears not that he meant, that a man committed by the King or the Privy Council, without cauſe, is not bailable by the Juſtices: and then he hath given no opinion in this Caſe. What he would have ſaid, if he had been asked the queſtion, cannot be known: Neither doth it appear by any thing he hath ſaid, that he meant any ſuch thing as would be inforced out of him.

And now, my Lords, I have performed the command of the Houſe of Commons, and (as I conceive) ſhall leave their Declaration of perſonal liberty an antient and undoubted truth, fortified with ſeven Acts of Parliament, and not oppoſed by any Statute or Authority of Law whatſoever.

The

The Objections of the Kings Council, with the Answers made thereunto at the two other conferences touching the same matter.

IT was agreed by Master Attorney General, that the seven Statutes urged by the Commons were in force, and that *Magna Charta* did extend most properly to the King. But he said, that some of them are in general words, and therefore conclude nothing; but are to be expounded by the Precedents, and others, that be more particular; are applied to the suggestions of Subjects, and not to the Kings command simply of it self.

Hereunto is answered, that the Statutes were as direct as could be, which appeareth by the reading of them, and that though some of them speak of *suggestions* of the *Subjects*, yet others do not; and they that do are effectual; for that they are in *equal* reason; a commitment by the command of the King being of as great force when it moveth by suggestion from a subject, as when the King taketh notice of the cause himself; the rather, for that Kings seldom intermeddle with matters of this nature, but by information from some of their people.

2. Master Attorney objected, that *per legem terræ* in *Magna Charta* (which is the foundation of this question) cannot be understood for process of the Law and

and Original Writ: for that in all criminal proceedings no Original Writ is used at all, but every Constable may arrest, either for Felony, or for breach of the Peace, without process or Original Writ: And it were hard the King should not have the power of a Constable: and the Statutes cited by the Commons make process of the Law, and Writ Original to be all one.

The answer of the *Commons* to this *Objection* was, that they do not intend Original Writs only by the Law of the Land, but all other legal process which comprehend the whole *proceedings* of Law upon the cause; other than the tryal by *Jury*, *per judicium parium*, unto which it is *opposed*. Thus much is imposed *ex vi termini*, out of the word Process, and by the true acceptation thereof in the Statute have been urged by the Commons to maintain their Declaration; and most especially in the Statutes of 25 *Edw.* 3. *cap.*4. where it appeareth, that a man ought to be brought in to answer by the course of the Law, having made former mention of process made by Original Writ. And in 28 *Edw.* 3. *cap.* 3. by the course of the Law, is rendred by due process of the Law. And 36 *Edw.*3. *Rot.Parl.nu.*20. the Petition of the Commons saith, that no man ought to be imprisoned by special command without Indictment or other due

Plowd. 289. Cook 5. 11. 2 *R.*3. 18, 21. *E.* 3. 9. 19. *H.* 6. *cap.* 4.

proceſs to be made by the Law. 37 *Ed.* 3. *cap.* 18. calleth the ſame thing proceſs of the Law. And 42 *Ed.* 3. *cap.* 3. ſtileth it by due proceſs and Writ Original; where the Conjunctive muſt be taken for a Disjunctive; which change is ordinary in expoſition of Statutes and Deeds to avoid inconveniences, and to make it ſtand with the reſt, and with Reaſon, and it may be collected, that by the Law of the Land in *Magna Charta*; by the courſe of the Law in 25 *Ed.* 3. by due proceſs of the Law in 28 *Ed.* 3. other due proceſs to be made by the Law 36 *Ed.* 3. proceſs of the Law 37 *Ed.* 3. and by due proceſs and Writ Original 42 *Ed.* 3. are meant one and the ſame thing; the latter of theſe Statutes referring always to the former; and that all of them import any due and regular proceeding of Law upon a cauſe, other than a trial by Jury. And this appeareth *Cook* 10. 74. in the caſe of the Marſhalſea; and *Cook* 11. 99. Sir *James Bagg*'s caſe, where it is underſtood of giving juriſdiction by Charter or Preſcription, which is the ground of a proceeding by courſe of Law; and in *Seldens* Notes on *Forteſcue fol.* 29. where it is expounded for Wager of Law, which is likewiſe a TRYAL at Law by the Oath of the party, differing from that of Jury: and it doth truly comprehend theſe and all other regular proceedings in Law upon cauſe, which gives authority

rity to the Constable to arrest upon cause: and if this should not be the true exposition of these words (*per legem terræ*) the Kings Council were desired to declare their meaning; which they never offered to do; and yet certainly, these words were not put into the Statute, without some intention of consequence.

And thereupon M. *Serjeant Ashley* offered an *interpretation* of them thus; namely, that there were divers Laws of this Realm; as the Common Law; the Law of the Chancery; the Ecclesiastical Law; the Law of Admiralty or Marine Law; the Law of Merchants; the Martial Law; and the Law of State; And that these words (*per legem terræ*) do extend to all those Laws.

To this it was answered, That we read of no Law of State, and that none of those Laws can be meant there, save the Common, which is the principal and general Law, and is always understood by way of *Excellency*, when *mention* is made of the *Law* of the Land generally; and that though each of the other Laws which are admitted into this Kingdom by Custom or Act of Parliament, may justly be called a Law of the Land; yet none of them can have that preheminency to be stiled the Law of the Land; and no Statute, Law-book, or other Authority, printed or unprinted, could be

ſhewed to prove that the Law of the Land, being generally mentioned, was ever intended of any other Law than the Common Law (and yet, even by theſe other Laws a man may not be committed without a cauſe expreſſed) but it ſtandeth with the Rule of other legal expoſitions, that *per legem terræ* muſt be meant the Common Law, by which the general and univerſal Law by which men hold their inheritances, and therefore if a man ſpeak of Eſcuage generally, it is underſtood (as *Littleton* obſerveth *pit. 99.*) of the incertain Eſcuage, which is a Knights ſervice tenure for the defence of the Realm by the body of the Tenant in the time of War; and not of the certain Eſcuage which giveth only a contribution in money, and no perſonal ſervice. And if a Statute ſpeak of the King's Courts of Record, it is meant only of the four at *Weſtminſter* by way of Excellency: *Cook. 6. 20. Gregories caſe.* So the *Canoniſts*, by the excommunication, if ſimply ſpoken, do intend the greater Excommunication; and the Emperor in his Inſtitutions, ſaith, that the Civil Law being ſpoken generally, is meant of the Civil Law of *Rome*, though the Law of every City is a Civil Law, as when a man names a Poet, the *Grecians* underſtand *Homer*, the *Latiniſts Virgil.*

Secondly, admit that *per legem terræ* extend to all the Laws of the Land; yet

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a man must not be committed by any of them, but by the due proceedings that are exercised by those Laws, and upon cause declared.

Again it was urged, that the King is not bound to express a cause of imprisonment; because there may be in it matter of State not fit to be revealed for a time, lest the Confederates thereupon make means to escape the hands of Justice: and therefore the Statutes cannot be intended to restrain all Commitments, unless a cause be expressed; for that it would be very inconvenient and dangerous to the State to publish the cause at the very first.

Hereunto it was replied by the Commons, That all danger and inconvenience may be avoided by declaring a general cause; as for Treason; for suspition of Treason, Misprision of Treason or Felony, without specifying the particular; which can give no greater light to a confederate then will be conjectured by the very apprehension or upon the imprisonment, if nothing at all were expressed.

It was further alledged, that there was a kind of contradiction in the Position of the Commons, when they say, that the party committed without a cause shewed, ought to be delivered and bailed; bailing being a kind of imprisonment, delivery a total freedom.

To this it was answered, that it hath always been the discretion of the Judge, to give so much respect to a commitment by the Command of the King, or the privy Council, (which are ever intended to be done on just *and weighty* causes) that they will not presently set him free, but bail him to answer what shall be objected against him on his Majesties behalf: But if any other inferiour Officer commit a man without cause shewed, they do instantly deliver him as having no cause to expect their pleasure, so the delivery is applyed to an imprisonment, by the command of some mean Minister of *justice*, bailing when it is done by the command of the K. or his Council.

It was urged by Master Attorney, That bailing is a *grace* and *favour* of a Court of Justice, and that they may refuse to do it. This was agreed to be true in divers causes, as where the cause appeareth to be for felony, or other crime expressed; for that there is another way to discharge them in convenient time, by their tryal; (And yet in those cases the constant practice hath been antiently and modernly to bail men) but where no cause of the imprisonment is returned, but the command of the King, there is no way to deliver such persons, by tryal or otherwise, but that of *Habeas Corpus*, and if they should be then remanded, they may be perpetually imprisoned, with-

without any remedy at all, and consequently, a man that had committed no Offence, might be in worse case than a great Offendor; for, the latter should have an ordinary tryal to discharge him, the other should never be delivered.

It was further said, that though the *Statute* of *West.* 1. *cap.* 15. as a *Statute*, by way of provision did extend only to the *Sheriff*; yet the Recital in that *Statute*, touching the 4. Causes wherein a man was not replevisable at common Law (namely those that were committed for the death of a man; by the command of the King, or the Justices, or for the Forrest) did declare that the Justices could not bail such an one, and that Replevisable and Bailable were *Synonyma*, and all one. And that *Stamford* (a Judge of great Authority) doth expound it accordingly; and that neither the *Statute* nor *He* say replevisable by the Sheriff, but generally without restraint; and that if the Chief Justice committed a man, he is not to be enlarged by another Court, as appeareth in the Register.

1. To this it was answered; First, that the Recital and Body of the Statute relate only to the *Sheriff*, as appeareth by the very words.

2. That Replevisable is not restrained to the Sheriff; for that the word imports no more, that a man committed

by the *Justice* is bailable by the Court of the Kings Bench.

3. That *Stamford* meaneth all of the Sheriff, or at the least he hath not sufficiently expressed that he intended the *Justices*.

4. It was denyed that Replevisable and Bailable are the same: For, they differ in respect of the place where they are used, Bail being in the King's Courts of *Record*, Replevisable before the Sheriff. And they are of several Natures, Replevisable being a letting at large upon Sureties; Bailing, when one *Traditur in ballium*, and the Bail are his Jaylors, and may imprison him, and shall suffer body for body, which is not true of replevying by *Statutes*. And Bail differeth from Mainprize in this, that Mainprize is an undertaking in a form certain, Bailing to answer the condemnation in civil Causes, and in criminal body for body.

And the Reasons and Authorities used in the first conference, were then renewed, and no exception taken to any, save that in 22. *Hen.* 6. it doth not appear that the Command of the King was by his mouth (which must be intended) or by his Council (which is all one, as is observed by *Stamford*) for the words are, that a man is not replevisable by the Sheriff, who is committed by the Writ or Commandment of the King.

21. *Edw.*

21. *Edw.* 1. *Rot.* 2. *dorso* was cited by the Kings Council. But it was answered that it concerned the Sheriff of *Leicestershire* only; and not the power of the Judges.

33. *Hen.* 6. the Kings Attorney confessed was nothing to the purpose; and yet that Book had been usually cited by those that maintain the contrary to the declaration of the Commons; and therefore such sudden opinion as hath been given thereupon, is not to be regarded, the Foundation failing.

And where it was said, that the *French* of 36. *Edw. Rot. Parl. n.* 9. (which can receive no answer) did not warrant but what was enforced thence; but that these words, (*Sans disturbance metter, ou arrest faire, & l'encontre per special mandement ou en autre manere*) must be understood, that the *Statutes* should be put in execution without disturbance or stay; and not that they should be put in execution without putting disturbance, or making arrest to the contrary by special command, or in other manner. The Commons did utterly deny the interpretation given by the Kings Council; and to justifie their own, did appeal to all men that understood *French*, and upon the seven *Statutes* did conclude that their Declaration remained an undoubted truth, not controuled by any thing said to the contrary.

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The true Copies of the Records cords not Printed, which were used on either side in that part of the debate.

Inter Record. Domini Regis Caroli in Thesaurar. recep. Sccii. sui sub Custodia Domini Thesaurar. & Camer. ibidem remanen. videlicet Plac. coram ipso Domino Rege & Concilio suo ad Parliamentum suum post Pasc. apud London in Manerio Archiepiscopi Ebor. Anno Regni Domini Regis Edwardi 21. int. al. sic. continetur ut sequitur.

Rot. Secundo in Dorso.

Vic. Leicester. STephanus Rabar. Vic. Leic. & Warr. coram ipso Domino Rege & ejus Concilio arrenatus & ad rationem positus de hoc quod cum *Johan. Bouteteurte*, *Edw. Del Hache*, & *W. Havelin* nuper in bal. ipsius Vic. per Dominum Regem fuissent assignat. ad *Goales* Domini Regis deliberand. idem Vic. quendam Wilhel. de Petling per quendam Appellatorem ante adventum eorum justic. ibidem appellatorem & Captum vivente ipso Appellatore usque diem deliberationis coram eis fact. dimisit per plevinam contra formam Statuti, *&c.* Et etiam quendam Radum de Cokehal, qui de morte hominis judicatus fuit, & per eundem Vic. Captus, idem Vic. per plevinam

plevinam dimisit contra formam Statuti, & etiam eundem Radum sine ferris coram eisdem Justic. ad deliberationem præd. produxit contra consuetudinem Regni. Et sci. quendam Wilh. filium Walteri la persone, qui per præceptum Com. War. Captus fuit, per plevinam contra præceptum Domini Regis, cum idem Dominus Rex per literas suas sub privat. sigillo suo eidem Vic. præcepit quod nulli per præcept. præd. Com. War. capt. aliquam gratiam faceret, &c. Et super hoc præfat. *Johannes Botetourte*, qui præsens est, & qui fuit primus Justic. prædictorum præmissa recordatur. Et prædictus Vic. dicit quoad prædictum Wilh. de Petling, quod ipse nunquam a tempore Captionis ipsius Wilh. per præd. Appellat. dimissus fuit per plevinam aliquam ante adventum prædictorum Justic. Imo dicit quod per dimidium Annum ante adventum eorundem Justic. captus fuit & semper detent. in prisona absque plevina aliqua quousque coram eis damnat. fuit. Et quoad prædictum Radum bene cognoscit quod ipse dimisit eum per plevinam, & hoc bene facere potuit ratione & authoritat. Officii sui, eo quod capt. fuit pro quadam simplic. transgr. & non pro aliqua felon. pro qua replegiari non potuit. Et quoad tertium, videlicet Wilh. filium persone, bene cognoscit quod ipse Captus fuit per præcept. præd. Com. War.

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& quod dimisit eum per plevinam; Sed dicit quod hoc fecit ad rogatum quorundam de hospitio & cur. Domini Regis, *&c.* qui eum inde specialiter rogaverunt per literas suas. Et super hoc idem Vic. quæsit. per Dominum *Regem* quis eum rogavit & literas suas ei direxit, & ubi literæ illæ sunt, dicit quod Walt. de Langton eum per literas suas inde rogavit; Sed dicit quod literæ illæ sunt in partibus suis Leic. Et super hoc idem Vic. profert quoddam brev. Domini Regis de privat. Sigillo eidem Vic. direct. quod testatur quod Dominus Rex ipsi Vic. præcepit quod omnes illos transgressores contra pacem & de quibus Com. War. ei scire faceret, caperet & salvo custodiret absque aliqua gratia ei faciend. Et quia præd. Justic. expresse recordatur quod ipse & socii sui per bonam & legalem inquis. de Militibus & al. liberis. hominib. eis fact. invenerunt quod prædictus Gulielmus de Petlenge dimissus fuit per plevinam per magnum tempus ante adventum eorund. Justic. usque adventum eorund. & per Vic. præd. & etiam quia præd. Vic. cognoscit quod prædictus Rad. dimissus fuit per plevinam per ipsum, un. & hoc dicit quod bene facere potuit eo quod captus fuit pro levi transgr. Et per Record. ejusdem Justic. comp. est quod captus fuit pro morte hominis, quod est contrarium dec. prædicti Vic. & scil. quia idem

Vic.

Vic. cognovit quod recepit literam Domini Regis per quam Rex ei præcipit quod nullam *gratiam* faceret illis qui capti fuerunt per præceptum prædicti Com. Et idem Vic. contra præceptum illud dimisit prædictum Wilh. filium Walteri per plevinam, qui captus fuit per præceptum prædicti Com. prout idem Vic. *fatetur.* Et sic *tam* ratione istius transgr. quam aliarum prædictarum incurrit in pœnam Statuti, cons. est quod prædictus Vic. committatur prisonæ juxta formam Statuti, *&c.*

Ex Rot. Parliamenti de Anno Regni Regis Edwardi tertii Tricesimo quinto n. *9.*

P*Rimerement que le grande Charter, & la Charter de la Forreste, & les autre Estatutes faits en son temps, & de ses progenitors pur profit de luy & de la come, soint bien & ferment gardes, & mis en due execution sans disturbance mettre ou arrest faire, & l'econtre per special mandement ou en autre manere.*

Responſ.

Nostre Sr. le Roy per assent de Prelates, Domines, Comites, Barones & la Come ad ordeine & estabili que les dits Charters & Estatutes soient tenus & mis en execution selon la dit Petition.

Nu. 2.

Item come il soit contenus en la grand Charter

Charter & autres Estatutes que nul homme soit pris nemy prisoner per special mandement sans Enditement aut autre due proces affaire per la ley, et sonent foitz ad estre et uncore est, que plusurs gentz sont empeschez, pris & imprisone sans Enditement ou autre proces fait per la ley sur eux, si bien de chose fait hors de la Forrest le Roy come per autre cause que plese a nostre dit Sr. comander et deliver ceux que sont issint pris per tiel especial mandement contre la forme des Charters et Estatutes avanditz. Respons.

Il plest au Roy, & si nul se sente grieve vingne & face la pleinte, & droit luy sera fait.

33.

Parl. Anno 42. Edward 3. n. 12.

Item pur ceo que plusours de vostre Come sont amerce & disturbis per faulx accusors queux font lour accusements plus pur lour vengeances & singulers profits que pur le profit de Roy ou de son peuple, et les accuses per eux ascuns ont est pris & ascuns sont faire ven. devant le Concil le Roy per brief ou autre mandement de Roy sub grande pain encountre la ley, Plese a nostre Sr. le Roy & son Conceil pur droit gouvernment de son peuple ordeign que si desire ascun accusors purpose ascun matire pur profit du Roy que cele matire soit mander a ses Justices del' un Banke ou del' autre, ou d' Assises deut enquere & terminere selonque la ley, & si le touche lai onsour ou partie eit sa sont a la come ley, & que null home soit mis a respondre

ſtondre ſans preſentment deut Juſtices, ou choſe de Record, ou per due proces & briefe original, ſelon l' ancient ley de la terre, & ſi rien deſire enovant ſoit fait a l' encontre, ſoit voide en ley, & tenu pour Errour. Reſponſ. Pur ceo que ceſte Article eſt Article de la grande Charter le Roy voet que ceo ſoit fait come la Petition demande.

Ex Rot. Clauſ. Anno Regis Edwardi primi primo m. 1.

Thomas deClirowe de Belchweth captus & detentus in priſona North. pro tranſgr. Forreſt. habet literas Rogero de Clifford Juſtic. Forreſt citra Trentam quod ponatur per ballium, dat. apud S. Martium Magnum London 20. die Octobris. *De ponend. per Ballium.*

M. 7.

Stephanus de Lidely captus & detent. in priſona Regis pro tranſ. per ipſum fact. in ha. Regis de Lyndeby habet literas, Regis Galfrido de Nevil Juſtic. ultra Trent. quod ponatur per Ballium.

M. *9.*

Thomas Spademan captus & detent. in priſona Oxon. pro morte Wilh. Win. unde rectat. eſt & habet literas Regis Vic. Oxon. quod ponatur per ballium. ibidem.

Gulielmus de Dene, Mathæus Cruſt, Roger de Bedell, Gulielmus Halfrench, Robertus Wyant, Alex. Horeux, Henric. de

de Shorne, Nicholaus de Snodilond, Turgisius de Hertfield, Robertus de Pole, & Richardus Galiot capti & detent. in prisona de Cantuar. pro morte Galfridi de Catiller unde appellat. sunt, habent literas Regis Vic. Canc. quod ponantur per ballium Dat. *&c.* 23. die Martii.

Claus. Anno secundo Edwardi primi M. 12.

Rex Rogero de Cliffi Justic. Forrest citra Trent. Mandamus vobis quod si Robertus Unwyne captus & detent. in prisona nostra de Aylesburie pro transgr. Forrestæ nostræ, invenerit vobis *duodecim* probos & legales homines *de balliva* vestra qui manucapiant eum habere coram Justic. *nostris.* ad plac. Forrest. cum in parte, *&c.* ad stand. inde rect. tunc apud Robertum si secund. assiam. Forreste fuerit repleg. prædictis 12. interim tradit. in ballium sicut prædictum est. Et habeatis nomina illorum 12. hominum & hoc bre. Dat. 27. die Februarii.

Clauso Anno secundo Edwardi primi. M. 24.

Ponend. per ballium.

Unwynus de Boycot, Gaf. de Wykenn & Hugh de Stowe detent. in prisona Regis de Aylesburie pro trangressione Venationis habuer. bre. direct. Regis de Clifford Justic. Forrest quod secundum assiam Forrest fuerint repleg. ponantur per ballium usque adventum Justic. Regis ad plac. Forreste cum in partes illas venerit. Dat. apud Codington 28. die Decembris. M. 15.

M. 15.

Gilbertus Conray de Kedington, & *Hugh le Tailour* de Kedington capti & detent. in prisona de secundo Edwardo pro morte Edwardi Butting, unde rectati sunt, habuerunt literas Regis Vic. Suff. quod ponantur per ballium.

Clauso Anno 3. *Edwardi primi.*

M. 11.

Galfr. de Hayerton captus & detent. in prisona Regis *Ebor.* pro *morte Ade le Clerc. unde rectatus est.* habet literas *Regis Vic. Ebor. quod ponatur per ballium. Dat. apud W.* 15. *die Junii.*

M. 20.

Robertus Belharbe capt. & detent. in prisona Regis de Newgate pro morte Thomæ Pollard. unde rectat. est, habet literas Regis Vic. Midd. quod ponatur per ballium. Dat. 28. die Februarii.

Clauso Anno quarto Edwardi primi.

M. 5.

Mand. est *Rad.* de *Sandwico* quod si *Gulielmus* de *Pattare* & *Johannes* filius ejus, *Walterus Home*, Walt. *Forven*, *Henricus Pothe* & *Gulielmus Cadegan* capti & detent. in prisona Regis de secundo *Briaiello* pro trans. Forrest unde rectati sunt invenerunt sibi duodecim probos & legales homines de balliva sua, *viz.* quilibet eorum duodecim qui eos ma-

S nucap.

nucap. habere coram Justic. Regis ad plac. Forrest. cum in partes ill. venerent, ad stand. inde recto, tunc ipsos Wilhelmum, Johannem, Walterum, Walterum, Henricum & Wilh. præd. duodecim. scil. secundum assiam Forreste fuerint repleg. tradat in ballium ut prædictum est, Et habeat ibi nomina illorum duodecim hominum, & hoc. bre. T. Rege apud Bellum locum Regis 29. die Augusti.

Clauso Anno quarto Edwardi primi.

M. 16.

Deponend. Par. ballium.

Henricus filius *Rogeri de Ken* de Cottesbrook, captus & detent. in prisona nostra North. pro morte Simonis le Charetter unde appellatus est, habet literas Regis Vic. North. quod ponit. per ballium.

Clauso Anno quinto Edwardi primi.

M. 1.

Mand. est Galfrido de Nevil Justic. Forreste ultra Trent. quod si Walter de la Grene captus & detent. in prisona de Nott. pro trans. Forreste invenerit sibi duodecim probos & legales homines qui eum manucapiant, *&c.* ad stand. inde rect. secundum assiam Forreste Regis, tunc ipsum Walterum prædictis duodecim tradat in ballium sicut prædictum est. Dat. decimo sexto die Novembris.

M. 2.

M. 2.

Thomas de Upwel & Jul. uxor ejus capt. & detent. in prisona de Wynbole pro morte Stephani Southell unde rectati sunt habuer. liter. Vic. Norff. quod ponantur per ballium. Dat. apud Rocheland 28. die Septembris.

Clauso Anno sexto Edwardi primi.

M.

Bilherus Pesse captus & detent. in prisona Regis de Norwich pro morte Jul. quond. uxoris suæ unde rectatus est, habet literas Vic. Norff. quod ponatur per ballium, T. Rege apud Westmonast. 12. Novembris.

M. 4.

Mandat. est Vic. Nott. scilicet quod si Thomas de Cadrte rectatus de transg. Forrest quam fecisse dicebatur in Forresto de Shirwood, invenerit sibi sex probos & legales homines de balliva sua qui eum Reg. ad stand. rect. coram *R.* cum *R.* inde manucap. habere coram Rege ad mand. vers. eum loqui voluerit, tunc præd. Tho. præd. sex hominib. tradat. in ballium juxta manucaptionem supradictam. Dat. decimo quinto die Decembris.

M. 4.

Thom. Burell capt. & detent. in prisona Regis Exon. pro morte Galf. Giffarde

farde unde rectat. est, habet litteras Vic. Devon. quod ponatur per ballium.

Clauso Anno 3. Edwardi secundi.

M. 13.

Adam depo-nend. in bail.

Adam le Piper Capt. & detent. in Gaole Regis Ebor. pro morte Henr. le Simer de Escrike unde rect. est, habet literas Regis Vic. Ebor. quod ponatur per ballium usque ad prim. assiam. T. Rege apud Westm. septimo die Febr.

M. 14.

Margareta uxor Wilh. Calbot capta & detent. in Gaole Regis Norwic. pro morte Agnetis filiæ Wilh. Calbot. & Martil. soror. ejusdem Agnet, unde recta-est, habet literas Regis Vic. Norff. quod ponatur per ballium T. Rege apud Shene 22. die Jan.

M. 18.

Johannes Frere Capt. & detent. in Gaole Regis Exon. pro morte Ade de Egeleigh unde rectat. est, habet literas Regis Vic. Devon. quod ponatur per ballium. T. Rege apud Westm. 8. die Decembris.

Clauso Anno quarto Edwardi secundi.

M. 7.

Robertus Shereve capt. & detent. in Gaole Regis de Colcestr. pro morte Roberti le Moigne unde indictat. est, habet literas Regis Vic. Essex. quod ponatur in

in ballium usque ad pri. assiam. Dat. 22. die Maii.

M. 8.

Wilh. filius Rogeri le Fishere de Shurborne capt. & detent. in Gaole Rogis Ebor. pro morte Roberti le Monnour de Norton unde rectatus est, habet literas Regis Vic. Ebor. quod ponatur per ballium usque ad pri. Assiam, Dat. 25. Die April.

Clauso Anno quarto Edwardi secundi.

M. 22.

Thom. Ellys de Stamford capt. & detent. in prisona Regis Lincoln. pro morte Michael. filii Wilh. de Foderingey unde rectatus est, habet literas Regis Vic. Linc. quod ponatur in ballium usque ad pri. Assiam. T. Rege apud novam West. octavo die Septembris.

Patent. Anno octavo Edwardi pars prima membr. 14.

Rex omnib. ad quos *&c.* Salutem, Sciatis quod cum Georgius de Rupe de Hiber. defunctus pro eo quod ad Parliamenta apud Dublin in Hibern. Ann. Regni Domini Edwardi nuper Regis Angl. præc. nostri vicesimo, & Anno Regni nostri secundo tenta, non venit prout summonitus fuit, ad ducentas marcas amerciatus fuisset ut accipimus, Ac Johannes filius prædicti Georgii *Pro Georgio de Rupe.*

nobis supplicaverit ut habito respectu ad hoc prædictus pater suus se a Parliamentis prædictis causa inobedientiæ non absentavit, per quod ita excessive amerciari deberet, Velimus concedere, quod amerciamenta illa quæ ab ipso Johanne ad opus nostrum per summonitionem Sccii nostri Dublin jam exigunt, juste moderentur. Nos volentes cum eodem Johanne gratiose agere in hac parte, Volumus & concedimus quod decem libræ tantum de prædictis ducentis marcis ad opus nostrum ex causis præmissis leventur: Et præfatum Johannem de toto residuo earundem ducentarum marcarum tenore præsentium quietamus. In cujus, &c. T. Rege apud Novum Castrum super Tynam.

Per Petitionem de Concilio apud Novum Castrum super Tynam.

Et mandat. est Thomæ & Camerar. de Sccio. Dublin quod prædictas decem libras de prædictis ducentis marcis de præfato Johanne ad opus Regis levent, & ipsum Johannem de toto residuo inde addict. Secum. exonerari & quietum esse fact. T. ut supra.

Per eandem Petitionem.

Patent.

Patent. vicesimo septimo Edwardi tertii pars prima membr. 13.

Rex omnibus ad quos, &c. Salut. Sciatis quod de gra. nostra speciali Concessimus pro nobis & hæred. nostris dilecto, & fideli nostro Jacobo Daudle de Helegh quod ipse ad totam vitam quietus sit de veniendo ad Parliamenta & Concilia nostra & hered. nostrorum ac etiam ad congregationes Magnatum & procerum ad mandata nostra vel heredum nostrorum ubicunque faciend. Ita quod idem Jacobus, quoad vixerit ratione non adventus sui ad Parliamenta, Concilia, seu Congregationes hujusmodi, seu Personalis Comparationis in eisdem per nos vel heredes nostros aut ministros nostros quoscunque non impetatur, occasionetur aliqual. seu gravetur. Concessimus insuper pro nobis & hered. nostris præfato Jacobo quod ipse toto tempore vitæ suæ ad laborand. de guerra in servitiis nostris vel hered. nostrorum seu ad homines ad arma, hobelarios, vel sagitarios in hujusmodi servitiis ex nunc inveniend. extra Regnum nostrum Angl. nisi cum Regale servitium nostrum aut heredum nostrorum summonitum fuerit, contra voluntatem suam nullatenus compellatur, nec ea de causa aliqualiter impetatur, Ita semper quod idem Jacobus cum hominibus ad arma & aliis armatis pro defensione

Pro Jacobo de Audele de non veniendo ad Parliamenta.

Regni nostri Angl. infra idem Regnum quoties aggressus inimicorum nostrorum aut aliud periculum vel necessitas eidem Regno immineant una cum aliis fidelibus nostris ipsius Regni proficiscat. & homines ad arma, hobelar. & sagittar. juxta statum suum sicut cæteri de eodem Regno ea de causa invenire teneatur. In cujus rei, *&c.* T. Rege apud West. 20. die April.

per ipsum Regem.

Patent. 42. *Edwardi* 3. *part. secunda mem.* 13.

Pro Roberto de Insula milite de non veniendo ad Parliament.

Rex omnibus Ball. & fidelibus suis ad quos *&c.* Salutem. Sciatis quod de gra. nostra *speciali* concessimus pro nobis & hered. nostris dilecto & fideli nostro Roberto de Insula, mil. fil. & heredi Johannis de Insula, quod idem Robertus ad totam vitam suam hanc habeat libertatem, videlicet, quod ad Parliamenta seu Concilia nostra vel hered. nostrorum ex quacunque causa venire minime teneatur. Et quod ipse in aliqua Jurata, attincta aut magna Assisas nos vel heredes nostros tangent. aut aliis Juratis, attinctis aut assizis quibuscunque non ponatur, *&c.* Et ideo Vobis mandamus quod prædictum Robertum contra hanc concessionem nostram non molestetis in aliquo seu gravetis. In Cujus *&c.* T. Rege apud West. 24. die Novembr.

Per breve de privato Sigillo.

Pat. 34.

Pat. 34. Henric. sext. numb. 23.

Rex omnibus ad quos *&c.* Salut. Sciatis quod cum pro quibusdam arduis & urgentibus negotiis nos statum & defensionem Regni nostri Angl. ac Ecclesiæ Anglicanæ contingentibus, quoddam Parliamentum nostrum nuper apud Palatium nostrum West. teneri, & usque ad duodecim. diem hujus instantis mensis Novembr. ad idem Palatium nostrum adjornari & prorogari ordinaverimus, quia vero dicto Parliamento nostro propter certas, justas & rationabiles causas in persona nostra non potuerimus interesse, Nos de circumspectione & industria Charissimi Consanguinei nostri Rich. Ducis Ebora. plenam fiduciam reportantes, eidem Consanguineo nostro ad Parliamentum prædictum nomine nostro tenend. & in eod. procedend. & ad faciend. omnia & singula quæ pro nobis & per nos pro bono regimine & gubernatione Regni nostri prædicti ac aliorum Dominorum nostrorum eidem Regno nostro pertinent. ibidem fuerint faciend. nec non ad Parliamentum illud finiend. & dissolvend. de assensu Concilii nostri plenam tenore præsentium commisimus potestatem. Dantes ulterius de assensu ejusdem Concilii nostri tam universis & singulis Archiepiscopis, Episcopis, Abbatibus, Prioribus, Ducibus, Comitibus,

Pro Rich. Duce Ebor. de tenend. Parliamentum nomine Regis.

bus, Vicecomitibus, Baronibus & Militibus cum omnibus aliis quorum interest ad Parliamentum nostrum prædictum conventur. scilic. tenore præsentium firmiter in mandatis quod eidem Consanguineo nostro intendant in præmissis in forma prædicta. In Cujus &c. T. Rege. apud West. 11. die Novembr. Per breve de privato Sigillo

& de dat. prædict. &c.

Pat. 24. Henric. 6. memb. 19. pars prima.

De non veniend. ad Parlia. Lovel.

Rex omnibus Balliis & fidelibus suis ad quos &c. Salut. Sciatis quod *cum* ubi Wilh. Lovel miles ad Parliamenta & Concilia nostra ad mandatum nostrum, venire teneatur, hinc est quod idem Wilhelmus, ob divers. infirmitat. quibus detinetur, absque maximo corporis sui periculo ad Parliamenta & Concilia prædicta laborare non sufficit, ut informamur. Nos præmissa, ac bona & gratuita servitia quæ idem Wilh. tam patri nostro defuncto quam nobis in partibus transmarinis impendit, & nobis in Regno nostro Angl. impendere desiderat Considerantes, de gratia nostra speciali Concessimus eidem Wilh. quod ipse durante vita sua per nos vel hered. nostros ad veniend. ad Parliamenta seu Concilia nostra quæcunque tent. sive in posterum tenen. contra voluntatem suam non arctetur nec compellatur

quovis

quovis modo, Sed quod ipse ab hujusmodi Parliamentis & Conciliis in futur. se absentare possit licite & impune, aliquo Statuto, Actu, Ordinatione sive Mandato inde in Contrarium fact. ordinat. sive provis. non obstant. Et ulterius volumus, & eidem Wilhelmo per præf. Concedimus quod absentatio hujusmodi non cedat ei in damnum seu prejudicium quoquo modo, Sed quod præf. Carta nostra de exemptione, per præfatum Wilh. seu alium quemcunque nomine suo in quibuscunque locis infra Regnum nostrum Angl. demonstrat. super demonstratione illa eidem Wilh. valeat & allocetur, Proviso semper quod idem Wilh. ad voluntatem suam, & heredes, sui loca sua in Parliamenta & Conciliis prædictis habeant & teneant, prout idem Welh. & antecessores sui in hujusmodi Parliamentis & Conciliis ab antiquo habuerunt & tenuerunt, Concessione nostra prædicta non obstante. In Cujus *&c.* T. Rege apud West. quarto die Febr.

Per breve de privato sigillo & de data prædicta authoritate Parliamenti.

Clauso Anno 27. *Henric.* 6. *m.* 24. *dorso.*

Rex dilecto & fidel. suo Hen. Bromflete, Militi Baroni de Vescy Salutem. Quia & Volumus enim vos & heredes vestros masculos de Corpore vestro legitime *Summonit. Parliamenti.*

time exeuntes Barones de Vessey existere. T. Rege apud West. 24. die Januar.

Pat. 34. *Henric. sext. membr.* 13.

Pro Henrico. Dom. Vessey de exemptione.

Rex concessit Hen. Bromflete militi domino Vessey qui senio & tantis infirmitatibus *detentus* existit, *quod absque* maximo Corporis sui periculo labor. non sufficit, quod ipse durante vita sua ad personalit. veniend. ad person. Regis, per aliquod breve sub *magno* vel privato sigillo, aut per literam *sub* sigillo Signeti Regis, vel per aliquod *aliud mandatum* Regis vel hered. *suorum seu* ad *aliquod Concilium*, sive *Parliamentum* Regis vel hæred. *suorem* ex *nunc* tenend. *nullatenus arctatur neque compellatur* contra *voluntat. suam* &c. T. Rege *apud.* West. 13. *die Maii.*

Per *ipsum* Regem de dat. prædicta *auctoritate Parliamenti.*

A SPEECH

Delivered in the Lower Houſe of

PARLIAMENT

ASSEMBLED AT

OXFORD:

In the firſt year of the Reign

OF

KING CHARLES I.

Written by Sir *Robert Cotton*, Knight and Baronet.

LONDON,
Printed in the Year, 1679.

A

SPEECH

Delivered in the Lower House of

PARLIAMENT

Assembled at

OXFORD:

In the first year of the Reign of

KING CHARLES.

Mr. *SPEAKER*,

ALthough the constant Wisdom of this House of Commons did well and worthily appear in censuring that ill advised Member the last day, for trenching so far into their antient Liberties, and might encourage each worthy Servant of the publique here to offer freely up his Counsel and opinion: Yet since these Walls cannot conceal from the Ears of captios, guilty and revengful men without the Counsel and debates within: I will endeavonr, as my clear mind is free from any personal

ſonal diſtaſte of any one, ſo to expreſs the honeſt thoughts of my heart, and diſcharge the beſt care of my truſt, as no perſon ſhall juſtly tax my innocent and publick mind, except his Conſcience ſhall make him guilty of ſuch Crimes as worthily have in Parliament Impeached others in elder times. I will therefore, with as much brevity as I can, ſet down how theſe diſorders have by degrees ſprung up in our own memories; how the Wiſdom of the beſt and wiſeſt *Ages* did of old redreſs the like. And laſtly, what modeſt and dutiful courſe I would wiſh to be followed by our ſelves in this ſo happy Spring of our hopeful Maſter. (For Mr. Speaker) we are not to judge, but to preſent: The redreſs is above *ad Querimoniam Vulgi.*

Now (Mr. Speaker) ſo long as thoſe attended about our late Soveraign Maſter, now with God, as had ſerved the late Queen of happy memory, debts of the Crown were not ſo great; Commiſſions and Grants not ſo often complained of in Parliaments; Trade flouriſhed; Penſions not ſo many, though more than in the late Queens time: for they exceeded not 18000 *l.* now near 120000 *l.* All things of moment were carryed by publick debate at the Council-Table; No honour ſet to ſale; nor places of Judicature. Laws againſt

Prieſts

Priests and Recusants were executed: Resort of *Papists* to Ambassadors houses barred and punished; his Majesty by daily direction to all his Ministers, and by his own Pen declaring his dislike of that Profession: No wastful expences in fruitless Ambassages, nor any transcendent power in any one Minister. For matters of State, the Council-Table held up the fit and antient dignity. So long as my Lord of *Somerset* stood in state of grace, and had by his Majesty's favour the trust of the Signet Seal; he oft would glory justy, there passed neither to himself, or his Friends, any long Grants of his Hignefs Lands or Pensions: For that which himself had, he paid 20000 *l.* towards the Marriage-Portion of the King's Daughter. His care was to pass no Monopoly or Illegal Grant, and that some Members of this House can witness by his charge unto them. No giving way to the sale of Honours, as a breach upon the Nobility (for such were his own words) refusing Sir *John Roper*'s Office, then tendred to procure him to be made a Baron. The match with *Spain*, then offered (and with condition to require no further toleration in Religion than Ambassadors here are allowed) discovering the double dealing and the dangers, he dissuaded his Majesty from, and left him so far in distrust of the Faith of that King;

and his great Instrument *Gondomar*, then here residing, that his Majesty did term him long time after a *Jugling Jack*. Thus stood th'effect of his power with his Majesty when the Clouds of his misfortune fell upon him. What the future advices led in, we may well remember. The Marriage with *Spain* was again renewed: *Gondomar* declared an honest man: Popery heartened by admission of those unsure, before conditions of Conveniency. The forces of his Majesty in the Palatinate withdrawn, upon *Spanish* faith improved here and believed; by which his Highness Children have lost their Patrimony, and more money been spent in fruitless Ambassages, than would have maintained an Army fit to have recovered that Countrey. Our old and fast Allies disheartened by that tedious and dangerous Treaty: And the King our now Master, exposed to so great a peril, as no wise and faithful Council would ever have advised. Errors in Government, more in misfortune by weak Councils than in Princes.

The loss of the County of *Poyntiffe* in *France*, was laid to Bishop *Wickham*'s charge in the first of *Rich.* 2. for perswading the King to forbear sending aid when it was required: a Capital crime in Parliament. The loss of the *Dutchy* of *Main* was laid to *Dela Poole*, D. of *Suffolk*

folk 28. *Hen.* 6. in single and unwisely treating of a Marriage in *France*.

A *Spanish* Treaty lost the Palatinate: Whose Council hath pronounced so great power to the *Spanish* Agent (as never before) to effect freedom to so many Priests as have been of late, and to become a Solicitor almost in every Tribunal for the ill-affected Subjects of the State, is worth the enquiry.

What Grants of Impositions before crossed, have lately been complained of in Parliaments? As that of *Ale-houses*, *Gold-Thread*, *Pretermitted Customs*, and many more; the least of which would have 50. *Edw.*3. been adjudged in Parliament an heinous crime, as well as those of *Lyons* and *Latymer*.

The Duke of *Suffolk* in *Hen.* 6. time, in procuring such another Grant in derogation of the Common Law, was adjudged in Parliament.

The gift of Honours kept as the most sacred Treasure of the State, now set to sale, Parliaments have been Suitors to the King to bestow those Graces, as in the times of *Edw.* 3. *Hen.* 4. and *Hen.* 6. more now led in by that way only, than all the merits of the best deservers have got these last 500 years. So tender was the care of elder times, that it is an Article 28. *Hen.* 6. in Parliament against the Duke of *Suffolk*, that he had procured for himself and some few others,

ſuch Titles of Honour; and thoſe ſo irregular, that he was the firſt that ever was Earl, Marqueſs, and Duke of the ſelf ſame place. *Edw.* the firſt reſtrained the number in policy, that would have challenged a Writ by Tenure: and how this portion may ſuit with profit of the State, we cannot tell. Great deſerts have now no other recompence than coſtly Rewards from the King: For, we now are at a vile Price of that which was once ineſtimable. If worthy Perſons have been advanced freely to places of greateſt truſt, I ſhall be glad. *Spencer* was condemned in the 15. of *Edw.* 3. for diſplacing good Servants about the King, and putting in his Friends and followers, not leaving either in the Church or Common-wealth, a place to any, before a Fine was paid unto him for his dependance. The like in part was laid by Parliament on *De la Poole.* It cannot but be a ſad hearing unto us all, what my Lord Treaſurer the laſt day told us of his Majeſties great Debts, high Engagements, and preſent wants: The noiſe whereof I wiſh may ever reſt incloſed within theſe Walls. For, what an incouragement it may be to our Enemies, and a diſheartening to our Friends, I cannot tell. The danger of thoſe, if any, they have been the cauſe, is great and fearful. It was no ſmall motive to the Parliament, in the time of

of *Hen.* 3. to banish the Kings Half-brethren for procuring to themselves so large proportion of Crown Lands. *Gaveston* and *Spencer* for doing the like for themselves, and their followers in *Edw.* the 2. time, the Lady *Vessy* for procuring the like for her Brother *Beaumont*, was banished the Court. *Michael de la Poole* was condemned the 20. of *Rich.* 2. in Parliament, amongst other Crimes, for procuring Lands and Pensions from the King, and having imployed the Subsidies to other ends than the grant intended. His Grand-child, *William* Duke of *Suffolk*, for the like was censured 28. *Hen.* 6. The great Bishop of *Winchester*, 50. *Edw.* 3. was put upon the Kings mercy by Parliament, for wasting in time of peace, the Revenues of the Crown, and gifts of the People, to the yearly oppression of the Commonwealth. Offences of this Nature were urged to the ruining of the last Duke of *Somerset*, in *Edw.* 6. time. More fearful examples may be found, too frequent in Records. Such Improvidence and ill Counsel led *Hen.* the 3. into so great a strait, as after he had pawned some part of his Forreign Territories, broke up his House, and sought his Diet at Abbies and Religious Houses, ingaged not onely his own Jewels, but those of the Shrine of St. *Edward* at *Westminster*, he was in the end (not content, but)

constrained to lay to pawn (as some of his Successors after did) *Magnam Coronam Angliæ*, the Crown of *England*. To draw you out to life the *Image* of former Kings extremities, I will tell you what I found since this Assembly at *Oxford*, written by a Reverend man, twice Vice-Chancellor of this place: his name was *Gascoign*; a man that saw the Tragedy of *De la Poole*: He tells you that the Revenues of the Crown were so rent away by ill Council, that the King was inforced to live *de Tallagiis Populi*: That the King was grown in debt *quinque centena millia librarum*: That his great Favourite, in treating of a Forraign Marriage, had lost his Master a Forreign Dutchy: That to work his ends, he had caused the King to adjourn the Parliament *in Villis & remotis partibus Regni*, where few people, *propter defectum hospitii & victualium* could attend, and by shifting that Assembly from place to place to inforce (I will use the Authors words) *illos paucos qui remanebunt de Communitate Regni, concedere Regi quamvis pessima.* When the Parliament endeavoured by an Act of Resumption, the just and frequent way to repair the languishing State of the Crown (for all from *Hen.* 3. but one, till the 6. of *Hen.* 8. have used it) this great man told the King it was *ad dedecus Regis*, and forced him from it: To which the Com-

Commons answered, although *vexati laboribus & expensis, Quod nunquam concederent taxam Regi*, until by Authority of Parliament, *resumeret actualiter omnia pertinentia Coronæ Angliæ.* And that it was *magis ad dedecus Regis*, to leave so many poor men in intolerable Want, to whom the King stood then indebted. Yet nought could all good Counsel work, until by Parliament that bad great man was banished; which was no sooner done, but an Act of Resumption followed the inrollment of the Act of his Exilement. That was a speeding Article against the Bishop of *Winchester* and his Brother, in the time of *Edw.* 3. that they had ingrossed the person of the King from his other Lords. It was not forgotten against *Gaveston* and the *Spencers* in *Edw.* 2. time. The unhappy Ministers of *Rich.* 2. *Hen.* 6. and *Edw.* 6. felt the weight to their Ruine of the like Errors. I hope we shall not complain in Parliament again of such.

I am glad we have neither just cause or undutiful dispositions to appoint the King a Council to redress those Errors in Parliament, as those of the 42 *H.* 3. We do not desire, as 5. *H.* 4. or 29. *H.* 6. the removing from about the King of evil Counsellors. We do not request a choise by name, as 14. *E.* 3. 3. 5. 11. *R.* 2. 8. *H.* 4. or 31. *H.* 6. nor to swear them in Parliament, as 35. *E.* 1. 9. *E.* 2.

or 5.*R*. 2. or to line them out their directions of rule, as 43.*H*.3. and 8. *H*.6. or desire that which *H*. 3. did promise in his 42. year *se acta omnia per assensum Magnatum de Concilio suo electorum, & sine eor. assensu nihil.* We only in loyal duty offer up our humble desires, that since his Majesty hath with advised judgment elected so wise, religious and worthy Servants to attend him in that high imployment, he will be pleased to advise with them together, a way of remedy for those disasters in State, led in by long security and happy peace, and not with young and single Counsel.

A

SPEECH

Made by Sir

ROB. COTTON,

Knight and Baronet,

Before the Lords of his Majesties most Honourable

PRIVY COUNCIL,

at the Council Table:

Being thither called to deliver his Opinion touching the

ALTERATION OF COYN.

Sept. 2. Annoque Regni Regis Caroli 2.

LONDON,

Printed in the Year, 1679.

A SPEECH Touching the ALTERATION OF COIN.

My LORDS,

SINCE it hath pleased this Honourable Table to command, amongst others, my poor Opinion concerning this weighty Proposition of money, I most humbly crave pardon; if with that Freedom that becomes my duty to my good and gracious Master, and my obedience to your great command, I deliver it so up.

I cannot (my good Lords) but assuredly conceive that this intended project of enhauncing the Coyn, will trench both into the Honour, the Justice, and the Profit of my Royal Master very far. All

Honour, Justice and Profit.

All Estates do stand *magis Famâ quam Vi*, as *Tacitus* saith of *Rome*: and Wealth in every Kingdom, is one of the Essential marks of their Greatness: and that is best expressed in the measure and purity of their Monies. Hence was it, that so long as the *Roman Empire* (a Pattern of best Government) held up their Glory and Greatness, they ever maintained, with little or no charge, the Standard of their Coin. But after the loose times of *Commodus* had led in Need by Excess, and so that shift of changing the Standard, the Majesty of that Empire fell by degrees. And as *Vopiscus* saith, the steps by which that State descended, were visibly known most by the gradual alteration of their Coin. And there is no surer Symptom of a Consumption in State than the corruption in money.

Edw. I. What renown is left to the Posterity of *Edw.* the first in a mending the Standard, both in purity and weight from that of elder and more barbarous times, must stick as a blemish upon Princes that do the contrary. Thus we see it was with *Hen.* the sixth; who, after he had begun with abating the measure, he after fell to abating the matter; and granted commissions to *Missinden* and others to practise *Alchemy* to serve his Mint. The extremity of the State in general felt this aggrievance, besides the dishonour it laid upon the Person

Hen. 6.

ſon of the King, was not the leaſt advantage his diſloyal Kinſman took to grace himſelf into the peoples favour, to his Soveraign's ruin.

When *Hen.* the 8. had gained as much of power and glory abroad, of love and obedience at home, as ever any; he ſuffered Shipwrack of all upon this Rock. *Hen. 8.*

When his Daughter Queen *Eliz.* came to the Crown, ſhe was happy in Council to amend that Error of her Father: For, in a Memorial of the Lord Treaſurer *Burleigh*'s hand, I find that he and Sir *Thomas Smith* (a grave and learned man) adviſing the Queen that it was the honour of her Crown, and the true wealth of her Self and People, to reduce the Standard to the antient parity, and purity of her great Grandfather, King *Edw.* 4. And that it was not the ſhort ends of Wit, nor ſtarting holes of devices that can ſuſtain the expence of a Monarchy, but ſound and ſolid courſes; for ſo are the words. She followed their advice, and began to reduce the Monies to their elder goodneſs, ſtiling that work in her firſt Proclamation, *Anno u. A famous Act.* The next year following, having perfected it as it after ſtood; ſhe tells her people by another *Edict*, that ſhe had conquered now that *Monſter* that had ſo long devoured them, meaning the Variation of the Standard; *Queen Eliz.* *Edw. 4.*

dard: And so long as that sad Adviser lived, she never (though often by Projectors importuned) could be drown to any shift or change in the rate of her monies.

Justices. To avoid the trick of Permutation, Coyn was devised, as a rate and measure of Merchandize and Manufactures; which if mutable, no man can tell either what he hath, or what he oweth, no contract can be certain; and so all commerce, both publique and private, destroyed; and men again enforced to Permutation with things not subject to wit or fraud.

The regulating of Coyn hath been left to the care of Princes, who are presumed to be ever the Fathers of the Common-wealth. Upon their honours they are Debtors and Warranties of Justice to the Subject in that behalf. *Bodin.* They cannot, saith *Bodin*, alter the price of the moneys to the prejudice of the Subjects, without incurring the reproach of *Faux Monnoyeurs*. And therefore the Stories term *Philip le Bell*, for using it, *Falsificateur de Moneta*. *Omnino Monetæ integritas debet queri ubi vultus noster imprimitur*, saith *Theodoret* the *Gothe* to his Mint-master, *Quidnam erit tutum si in nostra peccetur Effigie?* Princes must not suffer their Faces to warrant falshood. Theodoret *the Gothe.*

Although I am not of opinion with *Mirror*

Mirror des Justices, the antient book of our Common Law, that *Le Roy ne poit sa Mony empeirer ne amender sans l' assent de touts ses Counts*, which was the greatest Council of the Kingdom; yet can I not pass over the goodness and grace of money of our Kings: (As *Edw.* 1. and the 3. *Hen.* 4. and the 5. with others, who out of that Rule of this Justice, *Quod ad omnes spectat, ab omnibus debet approbari*, have often advised with the people in Parliament, both for the Allay, Weight, Number of pieces, out of Coynage and Exchange;) and must with infinite comfort acknowledg the care and justice now of my good Master, and your Lordships Wisdoms, that would not upon information of some few Officers of the Mint, before a free and careful debate, put in execution this project, that I much (under your Honours favour) suspect would have taken away the Tenth part of every mans due debt, or rest already reserved throughout the Realm, not sparing the King; which would have been little less than a Species of that which the *Roman* Stories call *Tabulæ novæ*, from whence very often seditions have sprung: As that of *Marcus Gratidianus in Livie*, who pretending in his *Consulship*, that the currant money was wasted by use, called it in, & altered the Standard, which grew so heavy and grievous to the people, as the Author saith,

Mirror des Justices.

Edw. 1. & 3. *Hen.* 4. & 5.

ſaith, becauſe no man thereby knew certainly his wealth, that it caus'd a Tumult.

Profit. In this laſt part, which is, the diſprofit this enfeebling the Coyn will bring both to his Majeſty and the Commonwealth, I muſt diſtinguiſh the Monies of Gold and Silver, as they are Bullion or Commodities, and as they are meaſure: The one, the extrinſick quality, which is at the Kings pleaſure, as all other meaſures, to name: The other the Intrinſick quantity of pure metal, which is in the Merchant to value. As there the meaſure ſhall be either leſſened or inlarged, ſo is the quantity of the Commodity that is to be exchanged. If then the King ſhall cut his Shilling or Pound nominal leſs than it was before, a leſs proportion of ſuch Commodities as ſhall be exchanged for it, muſt be received. It muſt then of force follow, that all things of neceſſity, as Victual, Apparel, and the reſt, as well as thoſe of pleaſure, muſt be inhaunced. If then all men ſhall receive in their Shillings and Pounds, a leſs proportion of Silver and Gold than they did before this projected Alteration, and pay for what they buy a rate inhaunced, it muſt caſt upon all a double loſs.

What the King will ſuffer by it in the Rents of his Lands, is demonſtrated enough by the alterations ſince the 18. of *Edw.* the 3. when all the Revenue of the Crown came into the receipt *Pondere & Numero,*

Numero, after five groats in the ounce; which ſince that time, by the ſeveral changes of the Standard, is come to five ſhillings, whereby the King hath loſt two third parts of his juſt Revenue.

In his Cuſtoms, the beſt of rate being regulated by pounds and ſhillings, his Majeſty muſt loſe alike: And ſo in all, and whatſoever monies that after this he ſhall receive.

The profit by this change in Coynage, cannot be much, nor manent. In the other the loſs laſting, and ſo large that it reacheth to little leſs than (yearly) to a ſixth part of his whole Revenue: for hereby in every pound tale of Gold, there is nine ounces, one penny weight, and 19 grains loſs, which is 25 *l.* in account, and in the 100 *l.* tale of Silver 59 ounces, which is 14 *l.* 17 *s.* more.

And as his Majeſty ſhall undergoe all theſe loſſes hereafter in all his receipts; ſo ſhall he no leſs in many of his diſburſements. The wages of his Souldiers muſt be rateably advanced as the money is decreaſed. This *Edw.* the 3. (as appeareth by the account of the Wardrobe and Exchequor) as all the Kings after were enforced to do, as oft as they leſſened the Standard of their monies. The prices of what ſhall be bought for his Majeſties ſervice, muſt in like proportion be inhaunced on him. And as his Majeſty hath the greateſt of Receipts and

Iſſues, ſo muſt he of neceſſity taſte the moſt of loſs by this device.

It will diſcourage a great proportion of the Trade in *England*, and ſo impair his Majeſties Cuſtoms. For that part (being not the leaſt) that payeth upon truſt and credit, will be overthrown; for all men being doubtful of diminution hereby of their perſonal Eſtates, will call in their moneys already out, and no man will part with that which is by him, upon ſuch apparent loſs as this muſt bring. What danger may befal the State by ſuch a ſuddain ſtand of Trade, I cannot gueſs.

The moneys of Gold and Silver formerly Coyned and abroad, being richer than theſe intended, will be made for the moſt part hereby Bullion, and ſo tranſported; which I conceive to be none of the leaſt inducements that hath drawn ſo many *Gold-ſmiths* to ſide this project, that they may be thereby Factors for the Strangers, who by the lowneſs of minting (being but 2 *s.* Silver the pound weight, and 4 *s.* for Gold; whereas with us the one is 4. and the other 5 *s.*) may make that profit beyond-ſea they cannot here, and ſo his Majeſtys Mint unſet on work.

And as his Majeſty ſhall loſe apparently in the alteration of moneys a 14. in all the Silver, and a 25. part in all the Gold he after ſhall receive; ſo ſhall the No-

Nobility, Gentry, and all other, in all their former setled Rents, Annuities, Pensions, and loans of money. The like will fall upon the Labourers and Workmen in their Statute-wages: and as their receipts are lessened hereby; so are their Issues increased, either by improving all prices, or disfurnishing the Market, which must necessarily follow: For if in 5. *Edw.* 6. 3. *Mariæ*, and 4. *Elizabethæ*, it appeareth by the Proclamations, that a rumor only of an alteration caused these effects, punishing the Author of such reports with Imprisonment and Pillory; it cannot be doubted but the projecting a change must be of far more consequence and danger to the State, and would be wished that the Actors and Authors of such disturbances in the Common-wealth, at all times hereafter might undergo a punishment proportionable.

It cannot be held (I presume) an advice of best judgment that layeth the loss upon our selves, and the gain upon our Enemies: for who is like to be in this time the greater Thriver? Is it not usual, that the Stranger that transporteth over moneys for Bullion, our own Gold-smiths that are their Brokers, and the Foreign Hedg-minters of the Netherlands (which terms them well) have a fresh and full Trade by this abatement? And we cannot do the Spanish

King (our greateſt enemy) ſo great a favour as by this, who being the Lord of this Commodity by his *Weſt-Indies*, we ſhall ſo advance them to our impoveriſhing; for it is not in the power of any State to raiſe the price of their own, but the value that their Neighbour Princes acceptance ſets upon them.

Experience hath taught us, that the enfeebling of Coin is but a ſhift for a while, as drink to one in a Dropſie, to make him ſwell the more: But the State was never throughly cured, as we ſaw by *Hen.* the eighths time, and the late Queens, until the Coyn was made up again.

I cannot but then conclude (my honourable Lords) that if the proportion of God and Silver to each other be brought to that purity, by the advice of Artiſts, that neither may be too rich for the other, that the mintage may be reduced to ſome proportion of Neighbour parts, and that the iſſue of our Native Commodities may be brought to overburthen the entrance of the Forreign, we need not ſeek any way of ſhift, but ſhall again ſee our Trade to flouriſh, the Mint (as the pulſe of the Commonwealth) again to beat, and our Materials by Induſtry, to be a mine of Gold and Silver to us, and the Honour, Juſtice, and Profit of his Majeſty (which we all wiſh and work for) ſupported.

The

The Answer of the Committees appointed by your Lordships to the Proposition delivered by some Officers of the Mint, *for inhauncing his* Majesties *moneys of Gold and Silver.*

2. September 1626.

The first Part. The Preamble.

WE conceive that the Officers of the Mint are bound by Oath to discharge their several duties in their several places respectively. But we cannot conceive how they should stand tyed by Oath to account to his Majesty and your Honours of the Intrinsick value of all Forreign Coyns, and how they agree with the Standard of the State (before they come to the Mint) for it is impossible and needless: In the one, for that all Forreign States do for the most part, differ from us and our money infinitely amongst themselves: In the other, it being the proper care of the Merchants, who are presumed not to purchase that at a dearer rate than they may be allowed for the same in fine Gold and Silver in the Coyn of *England*, within the charge of Coynage. And therefore needless.

To induce the necessity of the Proposition, they produce two instances or

examples; The one from the *Rex Doller*, and the other from the *Royal of Eight*; wherein they have unruly informed your Honours of the price and value in our monies, and our Trade of both of them. For whereas they say that the *Rex Doller* weigheth 18. penny weight and 12. grains, and to be of the finest at the pound weight, 10 ounces, 10 pence weight, doth produce in exchange 5 *s.* 2 *d.* farthing of Sterling moneys. We do affirm that the same *Dollar* is 18 *d.* weight, 18 grains, and in fineness 10 ounces 12 *d.* weight, equal to 4 *s.* 5 *d.* ob. of Sterling moneys, and is at this time in *London* at no higher price, which is short thereof by 13. grains and a half fine Silver upon every *Dollar*, being 2 *d.* Sterling, or thereabout, being the charge of coynage, with a small recompence to the Gold-smith or Exchanger, to the profit of *England* 3 *s.* 6 *d. per Centum.*

Whereas they do in their circumstance aver unto your Honours, that this *Dollar* runs in account of Trade amongst the Merchants as 5 *s.* 2 *d.* ob. *English* money: It is most false. For the Merchants and best experienced men protest the contrary, and that it passeth in exchange according to the Intrinsick value only 4 *s.* 5 *d.* ob. of the Sterling money, or near thereabouts, and not otherwise.

The second instance is in the *Royal of Eight*, affirming that it weigheth 17 penny

penny weight, 12 grains; and being but of the fineneſs of 11 ounces at the pound weight, doth paſs in exchange at 5 s. of our Sterling moneys, whereby we loſe *6 s. 7 d.* in every pound weight. But having examined it by the beſt Artiſts, we find it to be 11 ounces, 2 *d.* weight fine, and in weight 17 penny weight, 12 grains, which doth equal 4 *s.* 4 *d.* ob. of our Sterling moneys, and paſſeth in *London* at that rate, and not otherwiſe, though holding more fine Silver by 12 grains and a half in every *Royal of Eight*, which is the charge of coynage, and a ſmall overplus for the Gold-ſmiths gain. And whereas they ſay that the ſaid *Royal of Eight* runs in account of Trade at 5 *s.* of his Majeſties now *Engliſh* money; the Merchants do all affirm the contrary, and that it paſſeth only at 4 *s.* 4 ob. of the Sterling moneys, and no higher ordinarily.

And it muſt be ſtrange (my honourable Lords) to believe that our Neighbours the *Netherlanders*, would give for a pound tale of our Sterling ſilver, by what name ſoever it paſſeth, a greater quantity of their moneys in the like intrinſick value by exchange; or that our Merchants would, knowing, give a greater for a leſs to them, except by way of uſance. But the deceipt is herein only, that they continually varying their coyn, and crying it up at pleaſure, may

deceive us for a time, in too high a Reputation of pure Silver in it, upon truſt, than there is, unto a trial; and this, by no alteration of our coyn, unleſs we ſhould daily, as they, make his Majeſties Standard uncertain, can be prevented, which being the meaſure of Lands, Rents, and Commerce amongſt our ſelves at home, would render all uncertain, and ſo of neceſſity deſtroy the uſe of money, and turn all to permutation of ſuch things as were not ſubject to will or change.

And as they have miſtaken the ground of their propoſition, ſo have they upon a ſpecious ſhew of ſome momentary and ſmall benefit to his Majeſty, reared up a vaſt and conſtant loſs unto his Highneſs by this deſign, if once effected. For, as his Majeſty hath the largeſt proportion of any, both in the entrances and iſſues; ſo ſhould he by ſo enfeebling of his coyn, become the greateſt loſer.

There needs no other inſtance than thoſe degrees of diminution from the 18 of *Edward* 3. to this day; at which time the Revenue of the Crown was paid after five Groats the ounce (which is now five Shillings) which hath loſt his Majeſty two thirds of all his Revenue; and no leſs hath all the Nobility, Gentry, and other his Majeſties landed Subjects in proportion ſuffered. But ſince, to our great comfort, we heard

your

your Honours the laſt day to lay a worthy blame upon the Mint-maſters, for that intended diminution of the Gold-coyn done by them without full warrant, by which we reſt diſcharged of that fear: We will (according to our duties and your Honours command) deliver humbly our opinion concerning the reduction of the Silver money now currant to be proportionably equivalent to the Gold.

The *Engliſh* ſterling Standard, which was no little honour to *Edward* the firſt, that ſetled it from an inconſtant motion, and laid it a ground, that all the States of *Europe* after complyed to bring in their account, which was of Silver a 11 to one of Gold, the Kings of *England* for the moſt part ſince have conſtantly continued the ſame proportion: and *Spain*, ſince *Ferdinand*, who took from hence his pattern, have held and hold unchangeably the ſame unto this day: but ſince with us, a late improvement of Gold hath broke that rule, and caſt a difference in our Silver of ſix ſhillings in the pound weight; we cannot but in all humility preſent our fear, that the framing at this time of an equality, except it were by reducing the Gold to the Silver, is not ſo ſafe and profitable as is propoſed by thoſe of the Mint.

For whereas they pretend this, our richneſs of our Silver will carry out

what

what now remaineth: We conceive (under favour) it will have no ſuch effect, but clean contrary. For all the currant Silver now abroad hath been ſo culled by ſome Gold-ſmiths, the ſame either turned into Bullion, and ſo tranſported, that that which now remaineth will hardly produce 65 *s.* in the pound weight one with another; and ſo not likely, for ſo little profit as now it goeth, to be tranſported. But if the pound ſterling ſhould be as they deſire, cut into 70 *s.* 6 *d.* it muſt of neceſſity follow, that the new money will convert the old money (now currant) into Bullion; and ſo afford a Trade afreſh for ſome ill Patriot Gold-ſmiths, and others, who formerly have more endamaged the State by culling, than any others by clipping; the one but trading in pounds, the other in thouſands, and therefore worthy of a greater puniſhment. And we cannot but have juſt cauſe (my Lords) to fear that theſe bad members have been no idle inſtruments, for their private benefit, to the publick detriment, of this new project, ſo much tending to enfeebling the ſterling Standard.

We further (under your Lordſhips favours) conceive, that the raiſing of the Silver to the Gold, will upon ſome ſuddain occaſion beyond Sea, tranſport our Gold, and leave the State in ſcarcity of that, as now of Silver. And

And to that Objection of the Proposers, That there is no Silver brought of late into the mint: The causes we conceive to be (besides the unusual quantities of late brought into the Mint in Gold) one the overballancing of late of Trade; the other, the charge of Coynage. For the first, it cannot be but the late infection of this City was a let of exportation of our best Commodity, Cloath, made by that suspected in every place. To this may be added the vast sums of money which the necessary occasion of war called from his Majesty to the parts beyond the Seas, when we had least of Commodities to make even the ballance there. And lastly, Dearth and scarcity of Corn, which in time of plenty we ever found the best exchange to bring in Silver. And therefore, since by Gods great favour the Plague is ended, and general Trade thereby restored, and more of plenty this year than hath been formerly these many years, of Corn, we doubt not but if the Ports of *Spain* were now as free as they were of late, there would not prove hereafter any cause to complain of the want of Bullion in the State.

The second cause that the Mint remains unfurnished, will be the charge of Coynage, raised in price so far above all other places, constraining each man to carry his Bullion where he may receive by

by Coynage the leſs of loſs. And therefore if it may pleaſe his Majeſty to reduce the prices here to the Rates of other of our Neighbour Countreys, there will be no donbt but the Mint will beat as heretofore.

Queſtions to be propoſed to the Merchants, Mint-maſters, *and Goldſmiths, concerning the Alteration of the Silver Moneys.*

1. WHether the Engliſh moneys now currant are not as dear as the Forreign of the Dollar and Real of 8. in the intrinſick value in the uſual exchanges now made by the Merchants beyond Seas?

2. Whether this advancing will not cauſe all the Silver Bullion, that might be tranſported in maſs or Forreign Coyn, to be Minted with the Kings Stamp beyond Sea, and ſo tranſported, and his Mint thereby ſet leſs on work than now?

3. Whether the advancing the Silver-coin in *England* will not cauſe a tranſportation of moſt of that that is now currant to be minted in the *Netherlands*, and from them brought back again, whereby his Majeſties Mint will fail by the exported benefit?

4. Whether the advancing the Silver Coin,

Coin, if it produce the former effects, will not cause the Markets to be unfurnished of present Coin to drive the exchange, when most of the old will be used in Bullion.

5. Whether the higher we raise the Coin at home, we make not thereby our Commodities beyond Sea the cheaper?

6. Whether the greatest profit by this enhauncing, will not grow to the ill members of the State, that have formerly culled the weightiest pieces, and sold them to the Stranger-Merchants to be transported?

Certain general Rules collected concerning Money and Bullion, out of the late Consultation at Court.

GOld and Silver have a two-fold estimation: in the Extrinsick, as they are moneys, they are the Princes measures given to his people, and this is a Prerogative of Kings: In the Intrinsick they are Commodities, valuing each other according to the plenty or scarcity; and so all other Commodities by them; and that is the sole power of Trade.

The measures in a Kingdom ought to be constant: It is the Justice and Honour of the King; for if they be altered, all men at that instant are deceived in their

their precedent contracts, either for Lands or Money, and the King most of all; for no man knoweth then, either what he hath, or what he oweth.

1573. This made the Lord Treasurer *Burleigh* in 73. when some Projectors had set on foot a matter of this nature, to tell them that they were worthy to suffer death for attempting to put so great a dishonour on the Queen, and detriment and discontent upon the People. For, to alter this publick measure, is to leave all the Markets of the Kingdom unfurnished; and what will be the mischief, the Proclamations of 5. *Edw.* 6. 3. *Mariæ* and 4. *Elizabethæ*, will manifest; when but a rumor of the like produced that effect so far, that besides the faith of the Princes to the contrary delivered in their Edicts, they were inforced to cause the Magistrates in every Shire respectively to constrain the people to furnish the Markets to prevent a mutiny.

5. *Edw.* 6.
3. *Mariæ.*
4. *Eliz.*

To make this measure then, at this time short, is to raise all prizes, or to turn the money or measure now currant into disise or Bullion: for who will depart with any, when it is richer by seven in the hundred in the Mass, than the new monies, and yet of no more value in the Market?

Hence of necessity it must follow, that there will not in a long time be sufficient minted of the new to drive the exchange

change of the Kingdom, and ſo all Trade at one inſtant at a ſtand; and in the mean time the Markets unfurniſhed: Which how it may concern the quiet of the State, is worthy care.

And thus far as money is a meaſure.

Now, as it is a Commodity, it is reſpected and valued by the intrinſick quality. And firſt the one metal to the other.

All commodities are prized by plenty or ſcarcity, by dearneſs or cheapneſs, the one by the other: If then we deſire our Silver to buy Gold, as it of late hath done, we muſt let it be the cheaper, and leſs in proportion valued, and ſo contrary: for one equivalent proportion in both will bring in neither. We ſee the proof thereof by the unuſual quantity of Gold brought lately to the Mint by reaſon of the price; for we rate it above all other Countries, and Gold may be bought too dear. To furniſh then this way the Mint with both, is altogether impoſſible.

And at this time it was apparently proved, both by the beſt Artiſts and Merchants moſt acquainted with the Exchange, in both the examples of the Mint-maſters in the *Rex Dollar* and *Real of Eight*, that Silver here is of equal value, and Gold above, with the forreign parts in the intrinſick; and that the fallacy preſented to the Lords by the Mint-maſters, is only in the nomination or extrinſick quality. But

But if we desire both, it is not raising of the value that doth it, but the ballasing of Trade; for buy we in more than we sell of other Commodities, be the money never so high prized, we must part with it to make the disproportion even: If we sell more than we buy, the contrary will follow:

And this is plain in *Spains* necessities: For should that King advance to a double rate his *Real* of 8. yet needing, by reason of the barrennes of his Countrey, more of forreign Wares than he can countervail by exchange with his own, he must part with his money, and gaineth no more by enhauncing his Coin, but that he payeth a higher price for the Commodities he buyeth, if his work of raising be his own. But if we shall make improvement of Gold and Silver, being the staple Commodity of his State, we then advancing the price of his, abase to him our own Commodities.

To shape this Kingdom to the fashion of the *Netherlands*, were to frame a Royal *Monarch* by a Society of Merchants. Their Countrey is a continual Fair, and so the price of Money must rise and fall to fit their occasions. We see this by raising the Exchange at *Frankford* and other places, at the usual times of their Marts.

The frequent and daily change in the

low

low Countreys of their moneys, is no ſuch injuſtice to any there, as it would be here. For being all either Mechanicks or Merchants, they can rate accordingly their labours or their wares, whether it be Coin or other Merchandiſe, to the preſent condition of their money in exchange.

And our Engliſh Merchants, to whoſe profeſſion it properly belongs, do ſo, according to the juſt intrinſick value of their forreign Coin, in all barter of Commodities, or exchange, except at Uſance; which we, that are ruled and tyed by the extrinſick meaſure of moneys, in all our conſtant Reckonings and Annual bargains at home, cannot do.

And for us then to raiſe our Coin at this time to equal their proportions, were but to render our ſelves to a perpetual incertainty: for they will raiſe upon us daily then again; which if we of courſe ſhould follow, elſe receive no profit by this preſent change, we then deſtroy the Policy, Juſtice, Honour and Tranquillity of our State at home for ever.

THE DANGER WHEREIN THIS KINGDOM NOW STANDETH, AND THE REMEDY.

Written by Sir *Robert Cotton*, Knight and Baronet.

LONDON,
Printed in the Year, 1679.

The Danger wherein this Kingdom now ſtandeth, and the Remedy.

AS ſoon as the houſe of *Auſtria* had *incorporated* it ſelf into the houſe of *Spain*, and by their new *Diſcoveries*, gotten to themſelves the *Wealth* of the *Indies*, they began to affect, and have ever ſince purſued a fifth *Monarchy*.

The Emperor *Charls* would firſt have laid the foundation thereof in *Italy*, by ſurprizing *Rome*. But from this he was thruſt by the force and reſpect of Religion, *Hen.* the 8. being made *Caput fœderis* againſt him.

He then attempted it in *High-Germany*, practiſing (by faction and force) to reduce thoſe petty States to his abſolute power. In this *Hen.* the 8. again prevented him, by tying the *Lutheran Princes* under his confederacy and aſſiſtanee.

His Son, the ſecond *Philip*, purſued the ſame Ambition in the *Neither Germany*, by reduction whereof, he intended to make his way further into the other. This the late Q. of *Eng.* interrupted, by ſiding with the afflicted people on the one part, and making her ſelf Head of the Proteſtant League with the Princes on the other ſide; drawing in, as a ſecret

of State, the Countenance of *France*, to to give the more reputation and assistance to them, and security to it self.

Spain seeing his hopes thus fruitless by these Unions and sleights, began first to break (if he might) the Amity of *France* and *Engl.* But finding the common danger to be as fast a Tye, he raiseth up a party in that Kingdom of his own, by the which, the *French* King was so distressed, that had not the *English* Counsel and Assistance relieved him, *Spain* had there removed that next and greatest obstacle of his ambition.

His Council now tells him from these examples, that the way to his great work is impossible so long as *Engl.* lies a let into his way; and adviseth him, that the remove of that obstacle be the first of his intents. This drew on those often secret practices against the person of the late Queen, and his open fury in 88. against the body of the State: For which, she (following the advice of a free Council) will never after admit of Peace, winning thereby the hearts of a loving people, who ever found hands & money for all occasions at home, and keeping sacredly her Alliances abroad, secured her confederates all her time in *freedom*, from fear of *Spanish* slavery; and so ended her old and happy days in great glory.

Spain then, by the Wisdom and power of that great *Lady*, dispoiled so of his means

means to hurt; though not of his deſire, makes up with her peaceful Succeſſor of happy memory, the Golden League, that (diſarming us at home by opinion of Security, and giving them a power in our Council by believing their friendſhip and pretended marriage) gave them way to cheriſh amongſt us a party of their own, and (bereft of power abroad) to lead in jealouſie, and ſow a diviſion between us and our confederates; by which (we ſee) they have ſwallowed up the fortune of our Maſters Brother, with the reſt of the Imperial States, diſtreſſed the King of *Denmark* by that quarrel, diverted *Swedens* Aſſiſtance by the Wars with the *Pole*, and moving of him now with the offer of the *Daniſh* Crown: And now (whether from the Plot, or our Fatality) it hath caſt ſuch a *bone* between *France* and us, as hath gotten themſelves (by our quarrel of Religion) a faſt confederate, and us a dangerous enemy: So that now we are left no other Aſſurance againſt their malice and ambition, but the *Netherlands*, where the tye of mutual ſafety is weakned by daily diſcontents bred and fed between us from ſome ill-affected to both our Securities; that from the doubtfulneſs of friendſhip as now we ſtand, we may rather expect from our own domeſtick faction, if they grow too furious, they will rather follow the example of *Rome* in her growing, that held

it equally ſafe, honourable, and more eaſie *dare Reges*, than *ſubjugare Provinciam*; conſidering the power they have in their hands, than to give any friendly Aſſiſtance to ſerve the preſent condition of our State. You may ſee therefore in what terms we ſtand abroad; and I fear me, at home, for reſiſtance in no better State.

There muſt be, to withſtand a forreign invaſion, a *proportion* both of Sea & Land-forces; for to give an enemy an eaſie paſſage, and a port to relieve him in, is no leſs than to hazard all at one ſtake. And it is to be conſidered that no march by Land can be of that ſpeed, to make head againſt the Landing of an Enemy, nor no ſuch prevention as to be Mr. of the Sea. To this point of neceſſary defence, there can be no leſs than 240000 *l.*

For the Land-forces: If it were for an Offenſive war, the men of leſs livelihood were the beſt ſpared, and were uſed formerly to make ſuch war, *purgamento Republicæ*, if we made no further purchaſe by it. But for ſafety of a Common-wealth the Wiſdom of all times, did never intereſt the publick cauſe to any other than ſuch as had a portion in the *publick adventure*. And that we ſaw in 88. *when the care of the Q. & Council did make the body of that late Army, no other than of Trained-bands, which with the* Auxiliaries *of the whole Realm, amounted to no leſs than* 24000 *men. Neither were any of thoſe*

drawn

drawn out from forth their Countries, & proper habitations before the end of May, that there might be no long aggrevance to the publick; ſuch diſcontentments being ever to us a more fatal Enemy than any forreign force.

The careful diſtribution and direction of the Sea and Land-forces, being more fitting for a Council of War than a private man to adviſe of, I paſs over; yet ſhall ever be willing and ready (when I ſhall be called) humbly to offer up ſuch obſervations, as I have formerly gathered by the former like occaſions of this Realm.

To make up this preparation, there are requiſite two things, Money and Affections; for they cannot be properly ſevered. It was well & wiſely ſaid by that great & grave Councellor the L. Burleigh, *in the like caſe to the late Queen: Win hearts, and you may have hands and purſes: And I find of late, that diffidence having been a defect in the one, it hath unhappily produced the other.*

In gathering then of money for this preſent need, there are required three things, Speed, Aſſurance, *and* Satisfaction. *And the way to gather (as others in the like caſes have done) muſt be by that path which hath been formerly called* Via Regia, *being more ſecure and ſpeedy: For, by unknown and untroden ways, it is both rough & tedious, and ſeldom ſucceedeth well. This laſt way, although it took place as it were by a ſupply at firſt, and received no general denyal; yet ſince it hath drawn many to conſider with them-*

themselves and others of the Consequence, and is now conceived a pressure on their liberties and against Law, I much fear, if now again it be offered, either in the same face, or by privy Seal, it will be refused wholly. Neither find I that the restraint of those Recusants hath produced any other effect than a stiff resolution in them and others to forbear. Besides, though it went at the first with some assurance, yet when we consider the Commissions and other forms incident to such like services, as that how long it hangs in hand, and how many delays there were, we may easily see, that such a sum by Parliament granted, is far sooner and more easily gathered.

If any will make the successes of times to produce an inevitable necessity to enforce it levied (whether in general) by excise, or imposition, or in particular upon some select persons (which is the custom of some Countreys) and so conclude it (as there) for the *publick State Suprema lege*, he must look for this to be told him: That seeing necessity must conclude always to gather money, as less speedy or assured then that so practised (which *cannot* be fitter than by Parliament) the success attendeth the humors of the heedless multitude, that are full of jealousie & distrust; & so unlike to comply to any unusual course of Levy, but by force; which if used, the effect is fearful, and hath been fatal to the State; whereas that

that by Parliament resteth principally on the regal person, who may with ease and safety mould them to his fit desire, by a gracious yielding to their just Petitions.

If a Parliament then be the most *speedy, assured, and safe way*; it is fit to conceive what is the safest way to act and work it to the present end.

First, for the time of the usual Summons, reputed to be 40 days, to be too large for the present necessity; it may be by dating the Writ lessened, since it is no positive law; so that a care be had that there may be one County day, after the Sheriff hath received the Writ before the time of sitting.

If then the sum to be levied be once agreed of, for the time there may be in the body of the Grant, an Assignment made to the Knights of every County respectively, who (under such assurance) may safely give Security proportionable to the Receipts, to such as shall in present advance to the publick Service any sums of money.

The last and weightiest consideration (if a Parliament be thought fit) is, how to remove or comply the differences between the King and Subject in their mutual demands. And what I have learned amongst the better sort of the Multitude, I will freely declare, that your Lordships may be the more enabled to remove and answer those distrusts, that either concern Religion, publick safety of the King and State, or the just liberties of the Common-wealth.

For

For Religion (a matter that they lay nearest to their conscience) they are led by this ground of jealousie to doubt some practice against it.

First, for that the Spanish match, which was broken by the grateful industry of my L. *of* Buckingh. *out of his Religious care (as he there declares) that the Articles there demanded might lead in some such sufferance as might endanger the quiet, if not the State of the reformed Religion here: Yet there have (when he was an actor principal in the conditions with* France) *as hard, if not worse (to the preservation of our Religion) passed than those with* Spain. *And the suspect is strengthned by the close keeping of this Agreement in that point there concluded.*

It is no less an Argument of doubt to them of his affections, in that his Mother and others, many of his Ministers of near imployment about him, are so affected.

They talk much of his advancing men Papistically *devoted; some placed in the camp, of nearest service and chief command: And that the Recusants have gotten these late years, by his power, more of courage and assurance than before. If to clear these doubts (which perhaps are worse in fancy than in truth) he took a good course, it might much advance the publick Service against those squeymish humors that have more violent passion than setled judgment; and are not the least of the opposite number in the Commonwealth.*

The next is, The late misfortunes & losses of

of men, Munition, and honour in our late undertakings abroad; which the more temperate spirits impute to want of Counsel, and the more sublime wits to Practice.

They begin with the Palatinate, and by the fault of the loss there, on the improved credit of Gondomar, *distrusting him for the staying of supplies to Sir* Horace Vere, *when Colonel* Cecil *was cast on that imployment, by which the King of* Spain *became Master of the Kings Childrens Inheritance.*

And when Count Mansfield *had a Royal Supply of Forces to assist the Princes of our part, for the Recovery thereof, either Plot or Error defeated the Enterprize from us, to* Spains *great advantage.*

That Sir Robert Mansel's *expedition to* Algiers *should purchase only the security and guard of the Spanish Coasts. To spend so many hundred thousand pounds in the* Cales *Voyage against the advice of Parliament, only to warn the King of* Spain *to be in readiness, and so to weaken our selves, is taken for such a sign of ill affection to him, amongst the multitude.*

The spending of so much Munition, Victuals, and Money in my Lord Willoby's *journey, is conceived an unthrifty Error in the Director of it to disarm our selves in fruitless Voyages; nay, to some (over-curious) seems a plot of danger, to turn the quarrel of* Spain *(our antient Enemy) that the Parliament Petitioned and gave supply to support, upon our Ally of* France; *and soon after*

after, a new and happy tye gave much talk that we were not so doubtful of Spain *as many wish; since it was held, not long ago, a fundamental rule of their security and ours, by the old Lord Treasurer* Burleigh: *That nothing can prevent the Spanish Monarchy but a fastness of the two Princes, whose amity gave countenance and courage to the* Netherlands *and German Princes to make head against his Ambition. And we see by this dis-union, a fearful defeat hath happened to* Denmark *and that party, to the great advantage of the* Austrian *Family.*

And thus far of the Waste of publick Treasure in fruitless Expeditions: An important cause to hinder any new supply in Parliament. Another fear that may disturb the smooth and speedy passage of the Kings desires in Parliament, is the late waste of the Kings Livelihood; whereby is like (as in former times) to arise this jealousie and fear: That when he hath not of his own to support his ordinary charge (for which the Lands of the Crown were setled unalterable, and called Sacrum Patrimonium Principis) that then he must of necessity rest on those Assistances of the people, which ever were only collected and consigned for the Commonwealth. From hence it is like there will be no great labour or stiffness to induce his Majesty to an act of Resumption; since such desires of the State have found an easie way in the will of all the Princes, from the third Hen. *to the last. But that which is like to pass*

deeper

deeper into their diſputes and care, is the late preſſures they ſuppoſe to have been done upon the publick liberty and freedom of the Subject, in commanding their Goods without aſſent by Parliament, confining their perſons without eſpecial cauſe declared, and that made good againſt them by the Judges lately; and pretending a Writ to command their attendance in a foreign War: All which they are likely to enforce, as repugnant to many poſitive Laws, and cuſtomary Immunities of this Commin-wealth.

And theſe dangerous diſtruſts to the people, are not a little improved by this unexemplified courſe (as they conceive) of retaining an Inland Army in Winter-ſeaſon, when former times of greateſt fear, as 88. produced no ſuch; and makes them (in their diſtracted fears, to conjecture (idly) it was raiſed wholly to ſubvert their fortunes to the will of power more than of Law; and ſo make good ſome further breaches upon their liberties and freedoms at home, rather than defend us from any force abroad.

How far ſuch jealouſies, if they meet with an unuſual diſorder of lawleſs Souldiers, or an apt diſtemper of the looſe and needy multitude, which will eaſily turn away upon any occaſion in the State that they can ſide withal, to a glorious pretence of Religion and publick ſafety, when their true intent will be only Rapine of the rich, and ruine of all,

all, is worthy a provident and preventing care.

I have thus far delivered (with that freedom you pleased to admit) such difficulties as I have taken up amongst the multitude, as may arrest, if not remove Impediments to any speedy supply in Parliament at this time. Which how to facilitate, may better become the care of your Lordships Judgments than my Ignorance. Only I could wish, that to remove away a personal distaste of my Lord of *Buckingham* amongst the People, he might be pleased (if there be a necessity of Parliament) to appear a first Adviser thereunto; *and what satisfaction it shall please his Majesty of grace to give at such a time to his people (which I wish to be grounded by precedent of his best and most fortunate Progenitors, and which I conceive will largely satisfie the desires and hopes of all) If it may appear in some sort to be drawn down from him to the people by the zealous care and industry that my L. of* Buckingham *hath of the publick unity & content, by which there is no doubt that he may remain, not only secure from any further quarrel with them, but merit an happy memory amongst them of a zealous Patriot. For to expiate the passion of the people at such a time with sacrifice of any his Majesties Servants, I have ever found it as in* E. *the* 2. R. *the* 2. *and* H. 6.) *no less fatal to the Master, than the Minister in the end.*

VA-

VALOUR ANATOMIZED IN A FANCIE.

By Sir *PHILIP SIDNEY.*
1581.

LONDON,
Printed in the Year, 1679.

VALOUR ANATOMIZED IN A FANCY.

VAlour towards Men, is an Emblem of Ability; towards Women a good quality ſignifying a better. Nothing draws a Woman like to it. Nothing is more behoveful for that Sex: for from it they receive Protection, and in a free way too, without any danger. Nothing makes a ſhorter cut to obtaining: for a Man of Arms is always void of Ceremony, which is the Wall that ſtands betwixt *Piramus* and *Thisby*, that is, Man and Woman: For there is no Pride in Women, but that which redounds from our own baſeneſs (as Cowards grow Valiant upon thoſe that are more Cowards.) So that only by our pale asking, we teach them to deny; and by our ſhamefac'dneſs we put them in mind to be modeſt. Whereas indeed it is cunning Rhetorick to perſwade the hearers that they are that already which the world

would have them to be. This kind of Bashfulness is far from Men of valourous disposition, and especially from Souldiers; for such are ever men (without doubt) forward and confident, losing no time lest they should lose opportunity, which is the best Factor for a Lover. And because they know Women are given to dissemble, they will never believe them when they deny. Certainly before this age of Wit, and wearing black brake in upon us, there was no way known to win a Lady, but by Tilting, Turneying, and riding to seek Adventures through dangerous Forrests; in which time these slender Striplings with little legs were held but of strength enough to marry their Widows. And even in our days, there can be given no reason of the inundation of Servingmen upon their Mistresses, but only that usually they carry their Masters Weapons, and their Valour. To be accounted handsom, just, learned, and well-favoured, all this carries no danger with it: But it is better to be admitted to the title of Valiant acts; at least that imports the venturing of Mortality; and all Women delight to hold him safe in their Arms, who hath escaped thither through many dangers. To speak at once; Man hath a priviledge in Valour. In Cloaths and good Faces we do but imitate Women; and many of that Sex will

will not think much (as far as an answer goes) to dissemble Wit too. So then these neat Youths, these Women in Mens Apparel, are too near a Woman to be beloved of her; they be both of a Trade, but he of grim aspect, and such a one a Lass dares take, and will desire him for newness and variety. A Scar in a mans face, is the same that a Mole is in a Womans; and a Mole in a Womans, is a Jewel set in white, to make it seem more white. So a Scar in a Man, is a mark of honour, and no blemish; for 'tis a scar and a blemish in a Souldier to be without one. Now as for all things else which are to procure love, as a good Face, Wit, Cloaths, or a good Body; each of them (I must needs say) works somewhat for want of a better; that is, if Valour corrive not therewith. A good Face availeth nothing, if it be on a Coward that is bashful, the utmost of it is to be Kist, which rather increaseth than quencheth Appetite. He that sendeth her Gifts, sends her word also, that he is a man of small Gifts otherwise; for Woeing by signs and tokens, implies the Author dumb. And if *Ovid* (who writ the Law of Love) were alive, as he is extant, and would allow it as a good diversity, then Gifts should be sent as Gratuities, not as Bribes; and Wit would rather get promise than Love. Wit is not to be seen, and no Woman

takes advice of any in her loving, but of her own eyes, or her Waiting-woman; nay, which is worse, Wit is not to be felt, and so no good Bedfellow. Wit applyed to a Woman makes her dissolve her simperings, and discover her teeth with laughter; and this is surely a purge for Love; for the beginning and original of Love, is a kind of foolish melancholly. As for the Man that makes his Taylor his Bawd, and hopes to inveagle his Love with such a coloured Suit, surely the same man deeply hazards the loss of her favour upon every change of his Cloaths. So likewise the other that Courts her silently with a good Body, let me tell him that his Cloaths stand always betwixt his Mistriss eyes and him. The comlinesse of Cloaths depends upon the comlinesse of the Body, and so both upon opinion. She that hath been seduced by Apparel, let me give her to wit, that men always put off their Cloaths before they go to bed, and let her that hath been inamoured of her Servants Body, understand, that if she saw him in a skin of Cloath (that is, in a suit made to the pattern of his body) she would discern slender cause to love him ever after. There are no Cloaths fit so well in a Womans eye, as a suit of Steel, though not of the fashion: and no man so soon surpriseth a Womans affections, as he that is the subject of Whisper-

Whiſperings, and hath always ſome 20 ſtories of his own Atchievements depending upon him. Miſtake me not, I underſtand not by Valour one that never fights but when he is backt by drink or anger, or hiſſed on by beholders; nor one that is deſperate, nor one that takes away a Servingmans Weapons, when perhaps they coſt him his quarters wages; nor one that wears a privy Coat of defence, and therein is confident; for then ſuch as make Bucklers would be accounted the very ſcum of the Common-wealth. I intend one of an even reſolution, grounded upon Reaſon, which is always even, having his power reſtrained by the Law of not doing wrong.

Philip Sidney.

Wooing-ſtuff.

FAint Amoriſt; what, do'ſt thou think
To taſte Loves Honey, and not drink
One dram of Gall? or to devour
A world of ſweet, and taſte no ſour?
Do'ſt thou ever think to enter (ture
Th'*Eliſian* Fields, that dar'ſt not ven-

In *Charons* Barge? a Lovers mind
Must use to sail with every wind.
He that loves, and fears to try,
Learns his Mistriss to deny.
Doth she chide thee? 'tis to shew it,
That thy coldness makes her do it:
Is she silent? Is she mute?
Silence fully grants thy suite:
Doth she pout, and leave the room?
Then she goes to bid thee come:
Is she sick? why then be sure,
She invites thee to the cure:
Doth she cross thy suite with No?
Tush, she loves to hear thee Woo:
Doth she call the faith of man
In question? Nay, 'uds foot, she loves thee than:
And if e're she make a blot,
She's lost, if that thou hit'st her not.
He that after ten denials,
Dares attempt to farther tryals,
Hath no warrant to acquire
The dainties of his chaste desire.

Philip Sidney.

Sir

Sir *Francis Walsingham's*

ANATOMIZING

Of { *Honesty*, *Ambition*, and *Fortitude*.

Written in the year, 1590.

LONDON,
Printed in the Year 1679.

Sir *Francis Walsingham's*

ANATOMIZING

Of { *Honesty*, *Ambition*, and *Fortitude*.

WHat it is directly that I will write, I know not: For, as my thoughts have never dwelt long upon one thing, and so my mind hath been filled with the Imagination of things of a different nature: So there is a necessity that this Off-spring of so uncomposed a Parent must be misshaped, answerable to the Original from whence it is derived. Somewhat I am resolved to write, of some Virtues, and some Vices, and some indifferent things. For, knowing that a mans life is a perpetual action, which every moment is under one of these three heads; my Imaginations have ever chiefly tended to find out the Natures of these things, that I might (as much as my frailty (the inseparable companion of mans nature) would give me leave) wear out this Garment of my Body with as little in-

con-

convenience to my Soul as I could, and play this game of Converſation (in which every one (as long as he lives) makes one) with the reputation of a fair Gameſter, rather than of a cunning one.

And firſt I will write of Honeſty; not in its general ſenſe (in which it comprehends all Moral Virtues) but in that particular, in which (according to our phraſe) it denominates an honeſt man.

Honeſty is a quiet paſſing over the days of a mans life, without doing injury to another man.

There is required in an honeſt man, not ſo much to do every thing as he would be done unto, as to forbear any thing that he would not be content to ſuffer; for the eſſence of Honeſty conſiſts in forbearing to do ill: And to good Acts is a proper Paſſion, and no eſſential part of honeſty. As Chaſtity is the Honeſty of Women, ſo Honeſty is the Chaſtity of Man. Either of them once impaired is irrecoverable. For a Woman that hath loſt her Maidenhead, may as eaſily recover it, as a Man that hath once taken liberty of being a Knave can be reſtored to the title of an Honeſt man. For Honeſty doth not conſiſt in the doing of one, or one thouſand acts never ſo well; but in ſpinning on the delicate Threds of Life, though not exceding fine, yet free from bracks and ſtains. We do not call him an honeſt man,

man, but a worthy man, that doth brave eminent acts: But we give him the title of an honest man, of whom no man can truly report any ill.

The most eminent part of Honesty is Truth; not in words (though that be necessarily required) but in the course of his life; in his profession of Friendship; in his promise of Rewards and Benefits to those that depend upon him; and grateful acknowledging those good turns that he receives from any man.

The greatest Opposite to Honesty, is Falshood; and as that is commonly waited upon with Cunning and Dissimulation, so is Honesty with Discretion and Assurance.

It is true, that Custom makes some apparently false; some through Impudence, and too much use; and other some for want of Discretion, which if they had had, should have been employed in covering it. And there be some, in whom (though it be impossible Honesty should be a fault in Society) their indiscreet managing of it, makes it holden for a thing that's meerly a Vice, a wonderful troublesome Companion.

An Honest man is as near an Aptitude to become a Friend, as Gold is to become Coin: he will melt with good Offices well done, and will easily take the stamp of true Friendship; and having once taken it, though it may be bended

bended and bruised, yet still will keep his stamp clean without rust or canker, and is not ashamed to be enclosed in it, but is contented to have all his glory seen through it only.

It is of it self a competent Estate of Virtue, able to supply all necessary parts of it to a mans own particular; and a man that is born to it, may raise himself to an eminency of all Virtues; though of it self it will not furnish a man with the abilities of doing any glorious things. It is pity that Honesty should be abstracted from the lustre of all other Vertues. But if there be such an Honesty, the fittest Seat for it is the Countrey, where there will be little need of any greater ability, and it will be least subject to Corruption. And therefore, since it is the foundation upon which a man may build that part of his life which respects Conversation, he that builds upon it (let his actions be never so mean) shall be sure of a good, though not of a great Reputation; whereas letting it perish, let the rest of the building of his life be never so eminent, it will serve but to make the ruine of his good Name more notorious.

Of

Of Ambition.

LOve, Honour, and Praiſe are the greateſt Bleſſings of this world: All other Contents reflect primarily upon the Body; and pleaſe the Soul only becauſe they pleaſe ſome one or more ſenſes. But thoſe therefore only delight the ſenſes, becauſe the ſoul by diſcourſe was firſt pleaſed with them. For in it ſelf there is more Muſick in a railing Song, thruſt upon a good Ayre, than in the confuſed applauſe of the multitude. But becauſe the ſoul, by diſcourſe, finds this clamor to be an argument of the eſtimation which thoſe that ſo commend it have of it, it likes it ſelf better, and rejoyceth the more in it ſelf, becauſe it ſees other men value it. For there are two ways of proving; the one by Reaſon, and the other by Witneſs; but the more excellent proof is that of Reaſon: For he that can by Reaſon prove any thing to me, makes his knowledge mine, becauſe by the ſame Reaſon I am able to prove it to another: But if 20 men ſhould ſwear to me they ſaw ſuch a thing, which before I did not believe; it is true, I ſhould alter mine opinion, not becauſe there appeared any greater likelihood of the thing, but becauſe it was unlikely that ſo many men ſhould lie: And if I ſhould go about to make

others

others of the same opinion, I could not do it, by telling them I knew it, or I saw it; but all I could say, were, I did believe it, because such and such men told me they saw it. So in the comfort a man takes of himself (which grows out of the consideration of how much it self deserves to be beloved) a vertuous wise fellow will take enough comfort and joy in himself (though by misfortune he is troubled to carry about with him the worlds Ill Opinion) by discoursing that he is free from those Slanders that are laid upon him, and that he hath those Sufficiencies and Vertues which others deny. And on the contrary side, he without deserving it (having the good fortune to be esteemed and honoured) will easily be drawn to have a good opinion of himself; as, out of modesty, submitting his own Reason to the testimony of many Witnesses.

Ambition in it self is no fault; but the most natural commendation of the Soul, as Beauty is of the Body: It is in Men, as Beauty is in Women. For, as to be naturally exceeding handsome, is the greatest commendation of that Sex, and that for which they most desire to be commended; so that Ambition, by which men desire Honour the natural way (which consists in doing honourable and good acts) is the root of the most perfect commendation that a Moral man is capable of.

Those

Those only offend in their Ambition, who out of the earthlineſs of their minds dare not aſpire to that true Honour which is the eſtimation of a man, being as it were the Temple wherein Vertue is inſhrin'd: And therefore ſettle their minds only upon attaining Titles and Power; which at the firſt were, or at leaſt ſhould be the mark whereby to diſtinguiſh men according to the rate of their Vertues and ſufficiencies; but are now only Arguments of a mans good fortune, and effects of the Princes favour.

It is true that Power is a brave addition to a worthy man; but a Fool or a Knave that is powerful, hath (according to the degree of his power) juſt that advantage of a vertuous prudent man, that *Adam* before he fell, had of the Angels that ſtood; an ability to do more ill.

As for Titles (which at firſt were the marks of Power, and the rewards of Vertue) they are now (according to their name) but like the Titles of Books, which (for the moſt part) the more glorious things they promiſe, let a man narrowly peruſe them over, the leſs ſubſtance he ſhall find in them. And the wooden *Lord* is like the *Logg* that *Jupiter* gave the Frogs to be their King; it makes a noiſe; it prepares an expectation of great matters; but when

they once perceived it unactive, and senselesly lying still, the wiser sort of Frogs began to despise it, and (in fine) every young Frogling presumed to leap up and down upon it.

Some few there are, who (lest the species of our antient worthy Lords should be lost) do preserve in themselves the will and desire, since they want the means to do brave and worthy acts. And therefore I say, let a man by doing worthy acts deserve honour, and though he do not attain it, yet he is much a happier man than he that gets it without desert. For such a man is before-hand with Reputation; and the world still owes him that honour which his deserts cry for, and it hath not paid; whereas that man that hath a great Reputation, without deserving it, is behind-hand with the world; and his honour is but lent, not paid: And when the world comes to take accompt of its applause, and finds his title of Merit (by which he pretends to it) weak and broken, it will recall it's approbation, and leave him by so much the more a notorious Bankrupt in his good Name, by how much the estimation of his wealth that way was the greater.

Of

Of Fortitude.

FOr a Man to be compleatly happy, there is required the Perfection of all moral Virtues; and yet this is not enough; for, Vertues do rather banish Misfortunes, and but shew us Joy, than establish Felicity; which is not only an utter alienation from all affliction, but an absolute fulness of joy. And since the soul of man is infinitely more excellent than any thing else it can meet withal in this world, nothing upon Earth can satisfie it, but in the enjoying of the greatest abundance of all delights that the most nimble-witted man can frame to himself: For that his soul will still have a further desire, as unsatisfied with that it enjoys. Therefore the perfection of happiness consists in the love of God, which is only able to fill up all the corners of the soul with most perfect joy; and consequently to fix all its desires upon those Celestial Joys that shall never be taken from it. But this, as it cannot be obtained by discourse, but by unfeigned Prayers, and the assistance and illumination of Gods grace; so is it not my purpose to prick at it. And for that part of felicity which is attained to by moral Virtue, I find that every Virtue gives a man perfection in some kind, and a degree of Felicity too, *viz.*

Honesty gives a man a good report;
Justice, Estimation and Authority;
Prudence, Respect and Confidence;
Courtesie and *Liberality*, Affection, and a kind of Dominion over other men.
Temperance, Health.
Fortitude, a quiet mind, not to be moved by any Adversity, and a Confidence not to be circumvented by any danger.

So that all other Virtues give a man but an outward happiness, as receiving their reward from others; only *Temperance* doth pretend to make the Body a Stranger to pain, both in taking from it the occasion of Diseases, and making the outward inconveniences of want, as hunger and cold, if not deligtful, at least sufferable.

Fr. Walsingham.

A BRIEF DISCOURSE Concerning the Power of the PEERS AND COMMONS OF PARLIAMENT, In point of JUDICATURE.

Written by Sir *ROBERT COTTON* at the requeſt of a Peer of this Realm.

LONDON: Printed in the Year, 1679.

A BRIEF DISCOURSE Concerning the POWER OF THE PEERS, &c.

SIR,

TO give you as ſhort an account of your deſire as I can, I muſt crave leave to lay you, as a ground, the frame or firſt model of this State.

When after the period of the *Saxon* time *Harold* had lifted himſelf into the Royal Seat, the great Men, to whom but lately he was no more than equal either in fortune or power, diſdaining this act of Arrogancy, called in *William*, then Duke of *Normandy*, a Prince more active than any in theſe Weſtern parts, and renowned for many Victories he had fortunately atchieved againſt the *French* King, then the moſt poeent Monarch of Europe.

This Duke led along with him to this work of glory, many of the younger

Sons of the best Families of *Normandy*, *Picardy*, and *Flanders*, who as Undertakers, accompanied the undertaking of this fortunate man. The Usurper slain, and the Crown by War gained, to secure certain to his Posterity what he had so suddenly gotten, he shared out his purchase, retaining in each County a portion to support the Dignity Soveraign, which was stiled *Demenia Regni*, now the ancient Demeans; and assigning to others his adventurers such portions as suited to their quality and expence, retaining to himself dependency of their personal service (except such Lands as in free Alms, were the portion of the Church) these were stiled *Barones Regis*, the Kings immediate Freeholders; for the word *Baro* imported then no more.

As the King to these, so these to their followers sub-divided part of their shares into Knights Fees; and their Tenants were called *Barones Comites*, or the like; for we find, as the Kings write in their Writs, *Baronibus suis & Francois & Anglois*; the Soveraigns gifts, for the most part, extending to whole Counties or Hundreds, an Earl being Lord of the one, and a Baron of the inferiour Donations to Lords of Townships or Mannors. As thus the Land, so was all course of Judicature divided; even from the meanest to the highest portion,

on, each ſeveral had his Court of Law, preſerving ſtill the manner of our Anceſtors the *Saxons*, who *jura per pagos reddebant*; and theſe are ſtill termed Court Barons, or the Freeholders Court, twelve uſually in number, who with the *Thame* or chief Lord were Judges. The Hundred was next; where the *Hundredus* or *Aldermanus*, Lord of the Hundred, with the chief Lords of each Townſhip within their limits judged.

Gods People obſerved this form in the publique, *Centuriones & Decani judicabant plebem omni tempore.* The County or *generale placitum* was the next: This was, ſo to ſupply the defect, or remedy the Corruption of the Inferiour, *Ubi Curiæ Dominarum probantur defeciſſe, pertinent ad Vicecomitem Provinciarum.* The Judges here were *Comites*, *Vicecomites*, *& Barones Comitatus qui liberas in eo terras habent.*

The laſt and ſupream, and proper to our queſtion, was *Generale Placitum apud London*, *Univerſalis Synodus*, in Charters of the Conqueror, *Capitalis Curia*; by Glanvile, *Magnum & Commune conſilium coram Rege & Magnatibus ſuis.* In the Rolls of *Hen.* the third, it is not ſtative, but ſummoned by Proclamation: *Edicitur generale placitum apud London*, ſaith the Book of *Abingdon*; whether *Epiſcopi*, *Duces*, *Principes*, *Satrapæ*, *Rectores*, *& Cauſidici ex omni parte* *Lib. Ep.* Glanvile.

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consluerunt ad istam Curiam, saith Glanville, Causes were referred *propter aliquam dubitationem quæ emergit in Comitatu, cum Comitatus nescit dijudicare.* Thus did *Ethelwold* Bishop of *Winton*, transfer his Suit against *Leoftine* from the County *ad generale placitum*, in the time of King *Etheldred:* Queen *Edgin* against *Goda* from the County appealed to King *Etheldred* at *London*, *Congregatis principibus & sapientibus Angliæ.* A Suit between the Bishop of *Winton* and *Durham*, in the time of Saint *Edward*, *Coram Episcopis & Principibus Regni in præsentia Regis*, *ventilata & finita.* In the 10. year of the Conqueror, *Episcopi, Comites, & Barones Regia potestate è diversis Provinciis ad universalem Synodum pro causis audiendis & tractandis convocati*, saith the Book of *Westminster*; and this continued all along in the succeeding Kings Reigns until towards the end of *Henry* the third.

Lib. Sancti Etheldredi Episc.

As this great Court or Council consisting of the King and Barons, ruled the great affairs of State, and controlled all inferiour Courts; so were there certain Officers, whose transcendent power seemed to be set to bound in the execution of Princes Wills; as the Steward, Constable, and Marshal, fixed upon Families in fee for many Ages: They as Tribunes of the People, or *Ephori* amongst the *Athenians*, grown by an un-

unmannerly carriage, fearful to Monarchy, fell at the Feet and mercy of the King, when the daring Earl of *Leicester* was slain at *Evesham*. This Chance, and the dear experience *Henry* the third himself had made at the Parliament at *Oxford* in the 40th. year of his Reign, and the memory of the many streights his Father was driven unto, especially at *Runny-mead* near *Stanes*, brought this King wisely to begin what his Successors fortunately finished, in lessening the strength and power of his great Lords. And this was wrought by searching into the Regality that had usurped over their peculiar Soveraigns (whereby they were (as the Book at St. *Albans* termeth them) *Quot Domini tot Tyranni*) and by weakening that hand of power which they carried in the Parliaments, by commanding the service of many Knights, Citizens, and Burgesses to that great Council. Now began the frequent sending of Writs to the Commons, their assents not only used in Money, Charge, and making Laws (for before all Ordinances passed by the King and Peers) but their consent in Judgments of all natures, whether Civil or Criminal. In proof whereof, I will produce some few succeeding Presidents out of Record.

When *Adomar*, that proud Prelate of *Winchester*, the Kings half Brother, had grieved

*Liber Sancti Albans fol.*207. *Anno* 44. *lib.*4.

greved the State with his daring power, he was exiled by joynt sentence of the King, the Lords and Commons; and this appeareth expresly by the Letter sent by Pope *Alexander* the fourth, expostulating a revocation of him from Banishment, because he was a Churchman, and so not subject to LayCensures. In this, the Answer is, *Si Dominus Rex & Regni majores hoc vellent*, meaning his revocation, *Communitas tamen ipsius ingressum in Angliam jam nullatenus sustineret.* The Peers subsign this Answer with their names, and *Petrus de Montford vice totius Communitatis*, as Speaker or Protector of the Commons: For by this stile Sir *J. Tiptoft* Prolocutor affirmeth under his Arms the Deed of entail of the Crown by King *Henry* 4. in the 8. year of his Reign, for all the Commons.

Charta orig. sub Sigil Ann. 8. H. 4. apud Rob. Cotton.

The Banishment of the two *Spencers* in 15. E. 2. *Prælati, Comites & Barones & les autres Peeres de la terre & Commons de Roialme*, give Consent and Sentence to the Revocation and Reversement of the former Sentence; the Lords and Commons accord, and so it is expressed in the Roll.

Rot. Parl. anno. E. 2.

Rot. Parl. anno. 18. E. 2.

In the first of *Edward* the third, when *Elizabeth*, the Widdow of Sir *John de Burgo* complained in Parliament that *Hugh Spencer* the younger, *Robert Baldock*, and *William Cliffe* his Instruments,

Rot. Parl. anno 8. E. 3. n. 11.

ments, had by dureſs forced her to make a writing to the King, whereby ſhe was deſpoiled of all her inheritance, Sentence was given for her in theſe words. *Pur ceo que avis eſt al Eveſques Counts & Barones & autres Grandes & a tout Cominalte de la terre, qui le dit eſcript eſt fait contre ley, & tout manere de raiſon ſi fuiſt le dit eſcript per agard del parliam. dampue elloques al livre a la dit Eliz.*

In the 4th. of *Edward* 3. it appears by a Letter to the Pope, that to the Sentence given againſt the Earl of *Kent*, the Commons were parties as well as the Lords and Peers; for, the King directed their proceedings in theſe words; *Comitibus, Magnatibus, Baronibus, & aliis de Communitate dicti Regni ad Parliamentum illud congregatis injunximus, ut ſuper his diſcernerent & judicarent quod rationi & juſtitiæ conveniret, habere præ oculis, ſolum Deum qui cum concordi & unanimi ſententia tanquam reum criminis læſæ majeſtatis morti adjudicarent ejus ſententia*, &c.

When in the 50th. of *E.* 3. the Lords had pronounced the Sentence againſt *Richard Lyons*, otherwiſe than the Commons agreed; they appealed to the King, and had redreſs, and the Sentence entred to their deſires. *Parl. Ed.* 3.

When in the firſt year of *R.*2. *William Weſton*, and *John Jennings* were arraigned in Parliament for ſurrendring certain Forts of the Kings, the Commons *Parl.* 1. *R.* 2. *n.* 38, 39.

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were parties to the Sentence against them given, as appeareth by a Memorandum annexed to that Record.

Parl. 1. *H.* 4. In 1 *H.* 4. although the Commons refer by protestation, the pronouncing the sentence of deposition against King *Richard* the Second, unto the Lords, yet are they equally interessed in it, as appeareth by the Record, for there are made Protectors or Commissioners for the whole Parliament, one Bishop, one Earl, one Abbot, one Baronet, and two Knights, *Gray* and *Erpingham* for the Commons; and to infer, that because the Lords pronounced the sentence, the point of Judgment should be only theirs, were as absurd, as to conclude that no authority was left in any other Commissioner of *Oyer* and *Terminer*, than in the person of that man solely that speaketh the Sentence.

Rot. Parl. An. 2. *H.* 5. In the Second of *Hen.* the 5th. the Petition of the Commons importeth no less than a Right they had to act and assent to all things in Parliament; and so it is Answered by the King. And had not the Journal Roll of the Higher House been left to the sole entry of the Clerk of the Upper House, who either out of neglect to observe due form, or out of purpose to obscure the Commons right, and to flatter the power of those he immediately served, there would have been frequent examples of all times to clear

this doubt, and to preſerve a juſt Intereſt to the Common-wealth. And how conveniently it ſuits with Monarchy to maintain this form, leſt others of that well-framed body, knit under one head, ſhould ſwell too great and monſtrous it may be eaſily thought. For, Monarchy again may ſooner groan under the weight of an Ariſtocracy, as it once did, than under a Democracy, which it never yet either felt or feared.

R. C. B.

FINIS.